CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 595

KERSH LAKE DRAINAGE DISTRICT, ETC., ET AL.,
PETITIONERS,

vs.

A. J. JOHNSON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

PETITION FOR CERTIORARI FILED DECEMBER 16, 1939.

CERTIORARI GRANTED JANUARY 29, 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

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KERSH LAKE DRAINAGE DISTRICT, PETITIONER,

vs.

A. J. JOHNSON

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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[fol. a] [Caption omitted]

[fol. 1] **IN LINCOLN CHANCERY COURT**

BOARD OF COMMISSIONERS OF THE KERSH LAKE DRAINAGE DISTRICT,

Plaintiff,

vs.

DELINQUENT LANDS,

Defendants

COMPLAINT—Filed March 12, 1938

Come C. H. Holthoff, Emmett Warren, and T. H. Free, duly appointed, qualified, and acting commissioners of the Kersh Lake Drainage District, and in pursuance to a resolution regularly passed at a meeting of said Board of Commissioners authorizing the institution of this action, and for cause, state:

That the Kersh Lake Drainage District is a corporation organized and existing under and by virtue of a general act, (and acts amendatory thereof), of the General Assembly of the State of Arkansas, approved by the Governor May 29, 1909, for the purpose of creating and maintaining drains in the State of Arkansas, to incorporate a Board of Commissioners for said District and for other purposes in said act mentioned; said act is set forth in the published acts of the General Assembly of the State of Arkansas for the year as set forth from page 829 to 853, both inclusive, of said public acts, references to which is here made, and a copy of which is herewith filed as Exhibit "A" to this complaint.

Said Board of Commissioners of the Kersh Lake Drainage District as created and formed under and by virtue of said general act of the General Assembly, includes among other lands, each and all of the several tracts of land hereinafter mentioned and set forth as delinquent for the drainage taxes due thereon to plaintiff for the respective years and as hereinafter more particularly mentioned.

Each and all of the requirements as to the organization of said drainage district, the appointment and qualification of the assessors, therefor, their organization and acts, both as assessors and board of equalization, as provided in said [fol. 2] acts of the General Assembly creating and govern-

ing said District; the levy and collection of taxes as provided in said acts, including all legal notices and other requirements in said acts provided, including the appointment, qualification and acts of any and all officers whatsoever, authorized and provided for by said acts of the General Assembly, were in all things duly and faithfully complied with by plaintiff.

That the drains and ditches contemplated by said Act have been duly constructed in the manner contemplated thereunder, consisting of one main ditch and ten lateral ditches, at a cost to said District of about the sum of $181,500.00, exclusive of interest, for which certificates of indebtedness of said District have been duly issued, and approximately $63,000.00 thereof remains outstanding.

That an assessment of the increased value of betterments to accrue to the lands hereinafter described by reason of the construction of said drains, in the manner provided in said acts, was duly had, that the supposed name or names of the owners, thereof, the number of acres and the amount of drainage tax due for the year for which said lands are delinquent are hereinafter set forth, to which should be added also a penalty of twenty-five per cent (25%) of the taxes for each year for which said lands are delinquent, with interest thereon at the rate of six per cent (6%) per annum as provided by said acts, which is also due against same.

That for the said years hereinafter mentioned there was duly levied by the plaintiff, a drainage tax of six and five-tenths per cent (6.5%) on said betterments for the years 1935 and 1936.

That the owners of the lands as hereinafter described and for said years as hereinafter mentioned have failed and refused to pay said drainage taxes, and said lands have been duly returned delinquent as provided in said acts by reason of the nonpayment of taxes for said year; and there is now justly due by said lands the drainage taxes, together with penalty of twenty-five per cent (25%) thereon for [fol. 3] each year, together with six per cent (6%) interest as provided in said acts and all cost of the proceeding; all of said lands being in the County of Lincoln and State of Arkansas, the numbers given opposite each call referring to the section, township and range as follows, to wit:

(Description shown in full—Transcript pages 91 to 113, incl.)

That the plaintiff has a lien in the nature of a mortgage under and by virtue of the terms of said Acts upon each and all of the several tracts aforesaid, for the amount of said taxes, penalty and interest now due thereon as aforesaid.

Wherefore, plaintiff prays that said taxes, with penalty and interest as aforesaid be declared a lien upon the aforementioned respective tracts of lands for the amount or amounts severally due by each by virtue of their delinquencies aforesaid; that the plaintiff have judgment against said lands therefore, as provided by said Acts; that a short time be fixed by the court in which such judgments shall be paid; that in the event that same is not paid on or before the day to be so fixed, that said lands be sold by order of this court; that a commissioner of this court be appointed to conduct such sale, that such sale be had in the mode and manner prescribed by said Acts; and for general relief.

E. W. Brockerman, Attorney for Plaintiff.

Duly sworn to by E. W. Brockerman jurat omitted in printing.

[File endorsement omitted.]

[fol. 4] IN LINCOLN CHANCERY COURT

[Title omitted]

SEPARATE ANSWER OF A. J. JOHNSON AND ALL OTHER LANDOWNERS SIMILARLY SITUATED—Filed April 14, 1938

For his answer to the complaint filed herein, the defendant states that he is the owner, and has been at all times covered by this complaint, the following lands in Lincoln County, Arkansas, to-wit:

The Southwest Quarter (S. W. ¼) of Section Eight (8), Township Nine (9) South, Range Five (5) West,

together with other lands in said district similarly situated and similarly charged as the above lands. The defendant denies each and every material allegation in the complaint.

Denies that said lands are delinquent, denies that there is due on said lands $136.34 or any other sum.

Answering further defendant admits that the plaintiff district was organized by the Circuit Court of Jefferson County, Arkansas, on August 12, 1912 under Act 279 of the General Assembly of Arkansas, approved May 27th, 1909 and as amended by the General Assembly in 1911. That under the terms of said statute plaintiff district was required to calculate the interest on its money borrowed for the purpose of making the improvements contemplated and to include said interest in its assessment of benefits. That pursuant to said statute plaintiff district made prior to the assessment of benefits its cost of construction for the work contemplated by the district as follows:

Bond Issue	$135,000.00
10% for Contingencies	24,798.38
Interest on Bonds for 20 years	112,983.74
Total Cost of Construction	$272,782.12

[fol. 5] On the basis of the foregoing cost of construction this defendant's lands above described were assessed at the total sum of Sixteen Hundred Dollars ($1600.00) together with the other assessments made at this time aggregating for the district a total assessed benefits of $293,191.90. This assessment became final and incontestible as indicated in the order hereinafter set out. That the defendant with other land owners was assured that the benefits thus assessed did not draw interest and would not otherwise be increased. That the plan of the district as originally planned were not altered or changed and no additional benefits whatever were ever attempted, offered or made to the said lands; lands have been bought and sold with the warranty as provided by law at the organization that the benefits could not be increased.

That on March 4th, 1913 the Jefferson Circuit Court upon the foregoing estimate as submitted by the plaintiff district entered an order, among other things, as follows, to-wit:

"Now, therefore it is hereby considered, ordered and adjudged by the Circuit Court of Jefferson County, Arkansas, that there shall be assessed upon the real property, the railroads, tramroads, corporate and public roads of Kersh Lake Drainage District a tax of $272,782.12, which is the estimated cost of the improvement in said drainage district, being the bond issue, $135,000.00 with the accrued

interest thereon with ten per centum (10%) added for unforeseen contingencies, which tax is to be paid by the real property, railroad, tramroads, corporate and public roads in said district in the proportion to the amount of the assessment of benefits thereon, and which tax shall be a lien upon all the real property, railroads, tram roads, corporate and public roads in said district from this date and shall be entitled to preference over all demands, executions, encumbrances or liens whatsoever created, and shall continue until such assessments with any penalty and costs that may accrue thereon shall have been paid."

There was a large amount of the land within the limits of the plaintiff district on its organization that were not [fol. 6] assessed any benefits whatsoever. That the Board of Commissioners of the plaintiff district in any manner provided by law did in the year 1924 make a new or an additional assessment of benefits in behalf of this plaintiff district on lands not previously assessed and increased the value of the benefit assessment of said district in the total sum of $53,08[illegible]. That the assessment on this defendant's land was not changed or was not re-assessed. The defendant from the years 1913 to 1932 paid to the district a total sum of $1628.00, being the entire assessment, said payments being made in installments as follows:

January 1914, 1915, 1916, and 1917 @ $48.00 each	$192.00
January 1918, 1919 and 1920 @ $76.00 each	228.00
January 1921 and 1922 @ $130.00 each	260.00
January 1923 and 1924 @ $162.00 each	324.00
January 1925 to 1930 inclusive @ $104.00 each	624.00
Total Payments	$1628.00

That in 1931 after the above payments had been made defendant district levied an additional tax of $104.00 upon the foregoing lands of this defendant and the defendant did on May 15th 1931 contest with the plaintiff district the validity and legality of said additional assessment and the Chancery Court of Lincoln County held in its decree rendered on the 19th day of October, 1931 that the foregoing lands were not liable in favor of the plaintiff district. That a copy of the decree is attached to this complaint and made a part hereof.

The defendant states further that upon the rendition of said decree on October 1931 that W. A. Fish and others

filed a petition in said Lincoln Chancery Court regarding the additional assessment on all other lands in the district on which there had been paid the total amount of the original assessment of benefits. This cause was likewise heard and on the 15th day of June, 1932 the Chancery Court rendered its decree releasing and satisfying and freeing all of said lands from any further liens or liabilities in favor of the plaintiff district, and copy of said decree is hereto attached and made a part of this complaint.

[fol. 7] The defendant further states that the assessment and extension of taxes against his land is void and illegal, being contrary to laws of Arkansas and constitutes a cloud on the title of the defendant's land.

Wherefore, the defendant prays that the prayer of the complaint be denied, and that the complaint as to the land herein involved be dismissed and for such other relief as in this court defendant is entitled.

T. S. Lovett, Jr., A. J. Johnson, Attorney- for Defendant.

[File endorsement omitted.]

[fol. 8] EXHIBIT "A" TO ANSWER

IN THE LINCOLN CHANCERY COURT

#1556

A. J. JOHNSON, Plaintiff,

vs.

KERSH LAKE DRAINAGE DISTRICT, et al., Defendants

DECREE

On this 19th day of Oct., 1931, comes this cause for final determination and judgment and comes the plaintiff in person and comes the defendant by its attorney and the cause is by agreement of the parties submitted in vacation for trial upon the complaint, the answer and the agreed statement of facts and the court being advised as to the law and facts in the premises finds that the plaintiff is the owner in fee of the S. W. ¼ of Section 8, Township 9 South, Range 5 West; that said lands constitute a part of the

Kersh Lake Drainage District of Jefferson, Lincoln and Desha Counties; that said drainage district was organized by judgment of the Jefferson Circuit Court on August 24, 1912 under Act 279 of the Acts of 1909, and said lands as assessed a benefit of $1600.00 by the Assessors of said Kersh Lake Drainage District, and said assessment of benefits was duly confirmed by judgment of the Circuit Court of Jefferson County, Arkansas, on Feb'y 3rd, 1913; that subsequent to the confirmation of the assessment of benefits taxes were annually extended against plaintiff's said land and from Jan'y 1st, 1914 to and including the year 1929 payable in 1930 the plaintiff paid a tax in favor of Kersh Lake Drainage District and as a credit on the assessment of benefits made and confirmed against his lands the total sum of $1628.00; that the defendant commissioners over the protest of the plaintiff extended a total and further tax of $104.00 for the year 1930 payable in 1931 in favor of Kersh Lake Drainage District and the plaintiff has refused [fol. 9] to pay and the foregoing described lands have been certified by the Collector of Lincoln County to the Chancery Clerk of Lincoln County as delinquent for said amount and said commissioners are about to sell said lands for said delinquency.

The court further finds that upon the payment by the plaintiff of the total assessed benefits in favor of Kersh Lake Drainage District in the sum of $1600.00 against the S. W. ¼ of Section 8, Township 9 South, Range 5 West, all the lien, right or interest of the Kersh Lake Drainage District against said lands by virtue of the improvements made by the board of commissioners of and for the Kersh Lake Drainage District become duly paid and satisfied and the commissioners were without authority to extend further taxes against plaintiff's land collectible in year 1931 or any other years.

It is therefore considered, ordered and decreed that the lien of Kersh Lake Drainage District against S. W. ¼ of Section 8, Township 9 South, Range 5 West by virtue of its assessment of benefits in the sum of $1600.00 is fully satisfied and released; that the tax extended by the Commissioners for 1930 collectible in 1931 is without authority and void and the Clerk of this court shall satisfy the record of delinquent lands returned to him in 1931 as far as S. W. ¼ Section 8, Township 9 South, Range 5 West is concerned, and the defendant Commissioners are perma-

nently restrained from extending other or further taxes against the plaintiff's said lands and the plaintiff shall have judgment for his costs herein expended.

Harvey R. Lucas, Chancellor.

[fol. 9½] Clerk's certificate to foregoing paper omitted in printing.

[fol. 10] EXHIBIT "B" TO ANSWER

IN THE LINCOLN CHANCERY COURT

W. A. FISH, CLYDE E. FISH, et al., Plaintiffs,

vs.

C. H. HOLTHOFF, EMMETT WARREN, T. H. FREE, Commissioners Kersh Lake Drainage District, Defendants

DECREE

On this 15th day of June, 1932, this cause comes on for hearing before the Chancellor in Chambers, having been submitted by the parties on June 13th, 1932, during the regular adjourned session of the Court, and comes the plaintiffs by their attorney A. J. Johnson, and comes the defendants by their attorney E. W. Brockman and consents that the cause be heard for final decree on the complaint and exhibits thereto, the answer, the audit of the defendant district prepared in 1931; the supplemental audit of — prepared in 1932, the testimony of C. H. Holthoff and J. S. Fish and statement of counsel and on consideration of all the testimony and being fully advised finds the facts and declares the law in the premises as follows, to-wit:

First. That Kersh Lake Drainage District taxes paid in 1931 have been disbursed by the board of Commissioners in payment of the district's indebtedness and the plaintiffs' prayer for refund of said 1931 taxes is denied.

Second. That the assessed benefits on the lands in defendant district as confirmed by the court in favor of said district constitutes the total liability of said lands or the owners thereof to the defendant district; that the record of said benefits being on file with the County Clerk of Lincoln County, Arkansas.

Third. That extension of taxes by defendant district payable in 1932, where said extension plus taxes paid prior to [fol. 11] 1932 were in excess of the benefits confirmed against each and every parcel of land is an illegal and void tax to the full extent of such excess.

Fourth. That all taxes in favor of the defendant district payable in 1932 in excess of benefits are illegal and where paid under protest or on agreement that the same be refunded when correct amount be determined shall be by the Board of Commissioners refunded to the tax payer paying the same, and all extensions of taxes against the lands of the district payable in 1932 in excess of the benefits are illegal and void and the collector shall be credited with the excess where same was not paid the balance due, if any, if not paid by said land owners shall be returned delinquent.

Fifth. The Court finds as a complete and correct statement of total benefits against the lands, total payments made, balance due, excess payments, excess extensions and excess payments in 1932, as to the lands hereafter described are as follows, to-wit:

Descriptions omitted. See exhibit attached.

It is therefore considered, ordered and decreed that the commissioners of defendant Kersh Lake Drainage District be and they are directed to refund to the owner of the respective lands above described the amounts set opposite said lands in the columns marked "To be refunded tax payer"; that it is ordered and decreed that the defendant Commissioners shall credit the collector and the respective tracts of land with the respective amounts set out in the column marker "To be credited collector", and the defendant commissioners and the defendant Kersh Lake Drainage District are restrained from assessing, levying, or in any way encumbering any lands described above with taxes for said defendant district except such lands as are shown to be a balance due and listed in column marked "Balance to be levied", all refunds to be made at once and the collector [fol. 12] credited and the report thereof filed with the Clerk of this court as a permanent file thereof to be kept in the files of this cause.

Harvey R. Lucas, Chancellor.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 12a]

Section 26, Township 8S Range 6 West

Name	Part of Sec. or lot	Acres	Benefit	Bal. due
Mo. State Life Ins. Co.	NE¼ SE¼	40	$200	

Section 35, Township 8S, Range 6 West

Kansas City Title & T. Co.	NE¼	160	800	
T. H. Free	E½ SE¼	80	600	
Mo. State Life Ins. Co.	Pt. NW¼ SE¼	35	175	
T. H. Free	Pt. NW¼ SE¼	5	25	
T. H. Free	SW¼ SE¼	40	200	

Section 36, Township 8S Range 6 West

A. G. Ramkin Est.	NE¼	160	1600	
Robert Jackson	N pt. NE¼ NW¼	13.50	67.50	
T. H. Free	S pt. NE¼ NW¼	26.50	132.50	
Same	W½ NW¼	80.00	400.00	
Same	SE¼ NW¼	40.00	200.00	
Same	SW¼	160	1300.00	
A. G. Ranking Est.	SE¼	160	1600.00	

Section 1, Township 9S Range 5 West

C. H. Holthoff	Lots 1, 2, 3, 4, N½	215.98	3098.00	
Gantt & Warren	" 5, 6, 7, 8, N½	164.80	2055.52	
C. H. Holthoff	" 9, 10 N½	78.67	984.10	
F. H. Holthoff	Lot 11 N½	39.60	496.00	
C. H. Holthoff	" 12 N½	39.62	498.20	
Gantt & Warren	" 13, 14, 15, 16, N½	164.52	1834.88	
C. H. Holthoff	" 17, N½	39.80	411.20	
F. H. Holthoff	" 18, N½	39.88	391.80	
C. H. Holthoff	" 19, N½	40.16	562.24	
J. E. Allmon	" 20, N½	40.16	562.24	
Gantt & Warren	" 21, 22, 23, 24, N½	162.52	2038.44	
J. E. Allmon	" 25, N½	40.20	401.60	
C. H. Holthoff	" 26, N½	40.33	401.40	
State	NE¼ SW¼	40	600.00	
State	W½ SW¼	80	1200.00	
Mo. State Life Ins. Co.	SE¼ SW¼	40	600.00	
Gannt & Warren	N½ SE¼	80	1000.00	$425.30
Mo. State Life Ins. Co.	S½ SE¼	80	1000.00	313.50

Section 2, Township 9S Range 5 West

C. H. Holthoff	E½, Lot 1 N½	26.36	263.60	
Bluthenthal Sup. Co.	W½ " 1 N½	26.36	263.60	
Same	N. pt. Lot 2 N½	45.31	453.10	155.80
C. H. Holthoff	S. pt. " 2 N½	20	200.00	
Same	S. pt. " 3 N½	20	200.00	
Bluthenthal Sup. Co.	N. pt. " 3 N½	42.02	466.20	
C. H. Holthoff	Lot 4 N½	41	410.00	
W. S. Turner	" 5 N½	41	410.00	
Catherine Livingston	" 6, 7 N½	81	820.00	
C. H. Holthoff	" 8, 9, 10, 11, N½	170.32	1279.13	
Charley Parks	" 12, N½	40	500.00	
State	" 13, N½	42	525.00	
C. H. Holthoff	" 14, N½	41	500.00	
State	Pt. Lot 15 N½	6	75.00	
State	" " 15 N½	35	437.50	
Mary Ingram	Lots 16, 17 N½	84.86	921.67	117.35
Same	N½ Lot 18 N½	21.17	119.25	
F. H. Holthoff	S½ Lot 18 N½	21.16	119.25	
Mary Ingram	N½ Lot 19 N½	21.16	251.25	
F. H. Holthoff	Pt. S½ Lot 19 N½	19.17	251.25	
State	N½ Lot 20 N½	20.50	153.75	

Section 2, Township 9S Range 5 West—Continued

Name	Part of Sec. or lot	Acres	Benefit	Bal. due
State	S½ Lot 20 N½	20.50	$153.75	
State	Lot 21 N½	41	307.50	
J. H. Cochran	Pt. Lot 22 N½	31	405.71	
State	" " 22 N½	10	125.62	
State	" " 23 N½	41	512.50	
O. L. Flynn	Lot 24 N½	42.23	422.30	
Same	Lot 25 N½	42.23	422.30	
[fol. 12b]				
Mrs. J. M. Matthews	SW¼	160	800.00	
State	NE¼ SE¼	40	500.00	
State	NW¼ SE¼	40	500.00	
State	SW¼ SE¼	40	500.00	
State	SE¼ SE¼	40	500.00	

Section 3, Township 9S Range 5 West

A. A. Spurlock	Lots 1, 2 N½	104.41	783.08	$122.11
Same	E pt. Lot 3 N½	12.02	90.15	
Cal Spurlock	W pt. Lot 3 N½	36.03	270.23	
Same	Lot 4 N½	44.15	359.70	
C. H. Holthoff	Lot 5 N½	40.66	304.95	
Cal Spurlock	Lot 6 N½	40.07	359.70	
C. H. Holthoff	Lots 7, 8, 9, 10, 11, 12 N½	242.59	809.25	
B. F. Boren	Lots 13, 14 N½	81.17	609.46	
R. L. Boren	Lot 15 N½	40.34	327.38	
R. L. Boren	Pt. Lot 16 N½	39.84	107.87	
B. F. Boren	" " 16 N½	.50	1.25	
F. H. Holthoff	Pt. Lot 17 N½	40.34	100.85	
B. F. Boren	Lots 18, 19 N½	80.86	403.00	
O. L. Flynn	Lots 20 N½	40.51	505.44	
John Rhodes	Lot 21 N½	40.46	609.52	
B. F. Boren	Lots 22, 23 N½	80.77	1014.23	
Hattie Ousley	Lot 24 N½	40.34	113.35	
John R. Rhodes	NE¼ SW¼	40	600.00	
Mrs. J. M. Matthews	NW¼ SW¼	40	600.00	
W. J. Rolinson	S½ SW¼	80	1200.00	
Mrs. J. M. Matthews	SE¼	160	800.00	

Section 4, Township 9S Range 5 West

C. H. Holthoff	W½ Lot 1 N½	38.45	384.70	
B. F. Boren	E½ " 1 N½	38.45	384.70	
State	W½ " 2 N½	32.81	328.00	
State	E½ " 2 N½	32.81	328.00	
State	Lot 3 N½	41.58	404.60	
State	Lot 4 N½	41.58	404.60	
C. H. Holthoff	Lot 5 N½	40.24	402.40	
Same	Lot 6 N½	40.24	402.40	
L. L. Hoover	Lot 7 N½	40.24	502.98	
State	Lots 8, 9 N½	81.62	1014.50	
Cal Spurlock	Lot 10 N½	41.35	516.98	
State	Lot 11 N½	41.16	516.98	
State	E½ Lot 12 N½	20.59	257.36	
State	W½ Lot 12 N½	20.59	257.36	
State	E½ Lot 13 N½	20.12	251.20	
State	W½ Lot 13 N½	20.12	251.50	
State	W½ Lot 14 N½	20.12	251.25	
State	S½ Lot 14 N½	20.12	251.25	
State	Lot 15 N½	40.24	503.02	
State	Lot 16 N½	40.24	503.02	
State	Lot 17 N½	40.87	510.91	
State	Lot 18 N½	40.96	512.03	
State	Lot 20 N½	40.76	509.52	

Section 4, Township 9S Range 5 West—Continued

Name	Part of Sec. or lot	Acres	Benefit	Bal. due
State	Lot 20 N½	40.76	$509.48	
State	Lot 21 N½	40.24	503.00	
Will Jasper	Lot 22 N½	40.24	503.00	
State	NE¼ SW¼	40	500.00	
State	NW¼ SW¼	40	500.00	
State	SW¼ SW¼	40	500.00	
State	SE¼ SW¼	40	500.00	
State	NE¼ SE¼	40	500.00	
State	NW¼ SE¼	40	500.00	
State	SW¼ SE¼	40	500.00	
State	SE¼ SE¼	40	500.00	
	Section 5, Township 9S Range 5 West			
A. G. Rankin Est.	Lots 1, 2, 3, 4, 5, 6 N½	332.43	4109.60	
[fol. 12c]	Section 5, Township 9S Range 5 West			
State	Lot 7 N½	40.14	602.10	
State	Lot 8 N½	40.14	602.10	
State	Nry Lot 9 N½	3	45.00	
State	Lot 10 N½	40.14	608.40	
State	Lot 11 N½	40.63	608.40	
State	Lot 12 N½	40.61	607.65	
State	Lot 13 N½	40.31	602.70	
State	Lot 14 N½	40.32	602.70	
State	Lot 15 N½	40.14	602.70	
State	Nry Lot 16 N½	5.14	77.10	
State	Sry Lot 16 N½	35	525.00	
State	Lot 17 N½	40.14		
State	Lot 18 N½	40.14	602.10	
State	Lot 19 N½	40.14	602.10	
State	Lot 20 N½	40.40	602.10	
Frank Horsefall	E½ SW¼	80	1200.00	
State	NW¼ SW¼	40	600.00	
Sherman Williams	SW¼ SW¼	40	600.00	
State	N of Canal NE¼ SE¼	6	90.00	
State	S of Canal NE¼ SE¼	34	510.00	
State	NW¼ SE¼	40	600.00	
State	SW¼ SE¼	40	600.00	
State	SE¼ SE¼	40	600.00	
	Section 6, Township 9S Range 5 West			
A. G. Rankin Est	All Frl. Sec.	1697.21	5091.63	
	Section 7, Township 9S Range 5 West			
A. G. Rankin Est	NE¼	160.00	1800.00	
Same	Lots 1, 2, 3, 4, 5, 6, 7 NW¼	292.04	732.55	134.03
Same	Lots 8, 9, 10 SW¼	120.00	241.05	
J. B. Avery	Lots 11, 12 SW¼	84.91	160.00	
A. G. Rankin Est.	Lots 13, 14 SW¼	80	160.00	
Same	SE¼	160	560.00	
	Section 8, Township 9S Range 5 West			
Frank Horsefall	P. N½ NE¼	80	1200.00	
F. L. Duckworth	P. S½ NE¼	80	1200.00	
Frank Horsefall	P. NE¼ NW¼	40	600.00	
Henry Swift	D. NW¼ NW¼	40	600.00	
Pete Johnson	P. SW¼ NW¼	40	600.00	
A. J. Johnson	P. SE¼ NW¼	40	600.00	
Same	P. SW¼	160	1600.00	
W. A. Fish	D. SE¼	160	1600.00	

Section 9, Township 9S Range 5 West

Name	Part of Sec. or lot	Acres	Benefit	Bal. due
W. J. Rolinson	P. NE¼ NE¼	40	$500.00	
State	D. NW¼ NE¼	40	500.00	
Mrs. K. M. F. Conney	D. S½ NE¼	80	1000.00	
State	D. NE¼ NW¼	40	500.00	
M. & F. Bank	P. NW¼ NW¼	40	600.00	
State	P. SW¼ NW¼	40	600.00	
Mrs. K. M. F. Conney	D. SE¼ NW¼	40	600.00	
Same	D. NE¼ SW¼	40	600.00	
O. L. Flynn	P. NW¼ SW¼	40	600.00	
State	D. SW¼ SW¼	40	500.00	
State	D. SE¼ SW¼	40	500.00	
J. G. Ringo Est.	P. SE¼	160	1600.00	

Section 11, Township 9S Range 5 West

State	D. NE¼	160	2249.00	
State	P. N½ NW¼	80	200.00	
[fol. 12d]				
Metro. Life Ins. Co.	D. SW¼ NW¼	40	300.00	
State	P. SE¼ NW¼	40	480.00	
Metro. Life Ins. Co.	D. E½ SW¼	80	800.00	
Florence Witherspoon	D. NW¼ SW¼	40	240.00	
J. G. Ringo Est.	P. SW¼ SW¼	40	60.00	
State	D. N½ SE¼	80	1000.00	
Metro. Life Ins. Co.	D. S½ SE¼	80	1000.00	

Section 12, Township 9S Range 5 West

Mo. State Life Ins. Co.	D. E½ NE¼	80	800.00	
State	D. NW¼ NE¼	40	400.00	
State	D. SW¼ NE¼	40	400.00	
Mo. State Life Ins. Co.	D. NE¼ NW¼	40	600.00	
S. A. Banks	D. NW¼ NW¼	40	600.00	
Mo. State Life Ins. Co.	D. SW¼ NW¼	40	600.00	
S. E. Weston	D. SE¼ NW¼	40	600.00	
State	D. SW¼	160		
Geo. Nicholson	P. SE¼	160	2000.00	

Section 20, Township 8S Range 5 West

T. H. Free	D. NE¼ NE¼	40	500.00	
Dr. A. Thiolliere	P. W½ NE¼	80	1000.00	$233.30
Same	P. SE¼ NE¼	40	500.00	
State	D. NE¼ NW¼	40	500.00	
T. H. Free	D. W½ NW¼	80	600.00	115.80
Same	D. SE¼ NW¼	40	500.00	
Henry Wilkes	D. NE¼ SW¼	40	300.00	
T. H. Free	D. W½ SW¼	80	200.00	
Same	D. SE¼ SW¼	40	100.00	
Dr. A. Thiolliere	P. SE¼	160	2000.00	189.92

Section 21, Township 8S Range 5 West

W. C. Shepherd	P. Ery. E½ NE¼	34.54	517.50	
G. H. Holthoff	D. wry E½ NE¼	45.17	682.40	
State	D. W½ NE¼	80	800.00	
State	D. Pt. SE¼ NE¼	.33	4.95	
James Parish	P. Pt SE¼ NE¼	.03	.45	
State	P. NE¼ NW¼	40	600.00	
F. A. West, Gdn.	P. NW¼ NW¼	40	600.00	
Same	P. SW¼ NW¼	40	600.00	
State	P. SE¼ NW¼	40	600.00	
Mary Hill	P. E½ SW¼	80	1200.00	
Dr. A. Thiolliere	P. W½ SW¼	80	1200.00	
J. O. Knight	P. N½ SE¼	80	1200.00	
Wm. Zachirsa	P. S½ SE¼	80	1200.00	

Section 22, Township 8S Range 5 West

Name	Part of Sec. or lot	Acres	Benefit	Bal. due
W. C. Shepherd	P. N½	320	$2900.00	
State	D. Pt. NE¼ SW¼	39		
Belle Ellis	P. Pt. NE¼ SW¼	1		
State	D. Ery N½ N½, NW¼ SW¼	7	87.50	
J. O. Knight	P. Wry N½ N½ NW¼ SW¼	2.25	37.50	
State	P. Ery S½ N½ NW¼ SW¼	6	75.00	
J. O. Knight	P. Wry S½ N½ NW¼ SW¼	4	50.00	
A. L. Nuchols	D. Ery S½ NW¼ SW¼	3	37.50	
T. W. Gill	D. Wry S½ NW¼ SW¼	17.75	212.50	
Same	D. Wry S½ SW¼	50.51	631.37	164.85
T. W. Gill	D. Ery S½ SW¼	20.49	368.63	
E. H. Voight	P. NE¼ SE¼	40	500.00	
C. H. Holthoff	D. NW¼ SE¼	40	500.00	
T. W. Gill	D. SW¼ SE¼	40	300.00	
C. H. Holthoff	D. SE¼ SE¼	40	500.00	
Sophie Mitchell	P. NE¼ NE¼	40	500.00	
W. T. Tucker	P. NW¼ NE¼	40	500.00	

[fol. 12e]

Section 26, Township 8S Range 5 West

Tom Lincoln	P. N½ SW¼ NE¼	20	250.00	
C. W. Vick	P. SW¼ SW¼ NE¼	10	125.00	
W. E. Massey	D. SE¼ SW¼ NE¼	10	125.00	
Tom Lincoln	P. N½ SE¼ NE¼	20	250.00	
Charles Head, Est.	P. S½ SE¼ NE¼	20	250.00	
W. E. Massey	D. NE¼ NW¼	40	500.00	
W. T. Tucker	P. NW¼ NW¼	40	500.00	230.00
W. E. Massey	D. SW¼ NW¼	40	500.00	
C. W. Vick	P. E½ SE¼ NW¼	20	250.00	
W. E. Massey	D. W½ SE¼ NW¼	20	250.00	110.26
Same	D. N½ SW¼	80	1000.00	
Same	D. Pt. SW¼ SW¼	37.61	480.13	
Same	D. SE¼ SE¼	40	500.00	
Charley Head Est.	P. N½ NE¼ SE¼	20	250.00	
W. E. Massey	D. S½ NE¼ SE¼	20	250.00	
Same	D. W½ SE¼	80	1000.00	
State	D. Pt. N½ SE¼ SE¼	.25	3.13	
Annie Harris	P. Pt. N½ SE¼ SE¼	2.47	30.87	
State	D. Pt. N½ SE¼ SE¼	2	25.00	
W. E. Massey	D. Pt. N½ SE¼ SE¼	15.28	191.00	
Same	D. S½ SE¼ SE¼	20	250.00	
Same	D. SE¼ SW¼	40	500.00	

Section 27, Township 8S Range 5 West

C. H. Holthoff	D. NE¼ NE¼	40	500.00	
State	D. NW¼ NE¼	40	400.00	
W. E. Massey	D. Ery S½ NE¼	60	750.00	130.09
C. H. Holthoff	D. Wry S½ NE¼	20	150.00	
State	D. Pt. NE¼ NW¼	33	412.50	
Dr. A. Thiollier	P. Pt. NE¼ NW¼	7	87.50	
State	D. NW¼ NW¼	40	400.00	
W. E. Massey	D. SW¼ NW¼	40	500.00	
Same	D. NE¼ SE¼ NW¼	10	125.00	
Abston Buckner	P. W½ SE¼ NW¼	20	250.00	
C. H. Holthoff	D. SE¼ SE¼ NW¼	10	125.00	
Union Cen. Life Ins. Co.	P. SW¼	160	2000.00	
W. E. Massey	D. N & Ery NE¼ SE¼	20	250.00	
Union Cen. Life Ins. Co.	P. Pt S & Wry NE¼ SE¼	16.89	211.12	
Same	P. NW¼ SE¼	40	500.00	
J. S. Waterman	P. SW¼ SE¼	40	500.00	
W. E. Massey	D. Pt. SE¼ SE¼	35.31	441.38	

Section 28, Township 8S Range 5 West

Name	Part of Sec. or lot	Acres	Benefit	Bal. du
John & Wm. F. Muntz	P. NE¼	160	$2400.00	
G. H. Voight & H. H. Myers	P. NW¼	100	1600.00	
Josephine Bruce	P. NE¼ SW¼	40	600.00	
C. C. Handley	D. NW¼ SW¼	40	100.00	
Ophilia Miller	D. SW¼ SW¼	40	100.00	
State	D. SE¼ SW¼	40	100.00	
Union Cen. Life Ins. Co.	P. SE¼	160	2200.00	

Section 29, Township 8S Range 5 West

Dr. A. Thiollier	P. NE¼	160	1800.00	395.82
W. E. Free	P. N½ NW¼	80	200.00	
Same	P. SW¼ NW¼	40	100.00	
Mrs. G. L. McMichall	P. SE¼ NW¼	40	300.00	
State	P. N½ SW¼	80	200.00	
Elizabeth O. Crawford	P. S½ SW¼	80	200.00	
J. W. Moorehead	P. N½ SE¼	80	600.00	
Jeff Daniels	P. Pt. SW¼ SE¼	38	95.00	
School	P. Pt. SW¼ SE¼	2		
Jeff Daniels	P. 3/8 int. SE¼ SE¼	15	112.50	
C. H. Holthoff	P. 5/8 int. SE¼ SE¼	25	187.50	

[fol. 12f]

Section 30, Township 8S Range 5 West

Mrs. Kroley	D. NE¼	160	400.00	
Fannie Jones	P. Frl. NE¼ NW¼	40.08	300.00	
Gould Galbraith Sup. Co.	D. Frl. NW¼ NW¼	39.41	300.00	
State	D. Frl. SW¼ NW¼	39.47	300.00	
State	D. Frl. SE¼ NW¼	40.07	300.00	
A. G. Rankin Est.	D. Frl. SW¼	159	400.00	
State	P. N½ SE¼	80	200.00	
State	D. SW¼ SE¼	40	300.00	
Minnie Quinn	P. N½ SE¼ SE¼	20	150.00	

Section 31, Township 8S Range 5 West

A. G. Rankin, Est.	D. Frl. N½	218.92	2400.00	
Same	D. Frl. SW¼	159.77	1760.00	
S. B. Taylor	D. SE¼	160.00	1600.00	

Section 32, Township 8S Range 5 West

A. J. Johnson	P. N½ NE¼	80	160.00	
Gould Galbraith Sup. Co.	P. SW¼ NE¼	40	300.00	
State	P. SE¼ NE¼	40	300.00	
E. O. Crawford	P. N½ NW¼	80	160.00	
Same	P. SW¼ NW¼	40	80.00	
State	D. SE¼ NW¼	40	300.00	
C. H. Holthoff	P. NE¼ SW¼	40	300.00	
E. O. Crawford	P. NW¼ SW¼	40	300.00	
Mrs. C. L. Knox	P. SW¼ SW¼	40	300.00	
C. H. Holthoff	P. SE¼ SW¼	40	300.00	
Same	P. N pt. NE¼ SE¼	6	45.00	
Same	P. S pt. NE¼ SE¼	34	255.00	
Same	P. NW¼ SE¼	40	300.00	
J. F. Knight	P. S½ SE¼	80	600.00	

Section 33, Township 8S Range 5 West

Union Cen. Life Ins. Co.	P. NE¼	160	2200.00	
State	D. NW¼	160	2400.00	
Ophelia Miller	D. NE¼ SW¼	40	200.00	
Rosie Evans	P. Pt. W½ SW¼	16	80.00	
State	P. Pt. W½ SW¼	16	80.00	
State	D. Pt. W½ SW¼	16	80.00	

Section 33, Township 8S Range 5 West—Continued

Name	Part of Sec. or lot	Acres	Benefit	Bal. due
E. B. White	D. Pt. W½ SW¼	16	$80.00	
State	P. Pt. W½ SW¼	16	80.00	
R. W. Giter	P. Pt. SE¼ SW¼	39.50	200.00	
Union Cen. Life Ins. Co.	P. SE¼	160	1800.00	185.30
	Section 34, Township 8S Range 5 West			
W. E. Massey	P. NE¼ NE¼	40	600.00	
Mrs. Inez T. Royston	P. NW¼ NE¼	40	600.00	
Bluthenthal Sup. Co.	D. SW¼ NE¼	40	600.00	
Clyde E. Fish	P. SE¼ NE¼	40	600.00	
Union Cen. Life Ins. Co.	P. N½ NE¼ NW¼	20	300.00	
Bluthenthal Sup. Co.	D. S½ NE¼ NW¼	20	300.00	
Union Central Life Ins. Co.	P. NW¼ NW¼	40	600.00	
Same	P. SW¼ NW¼	40	600.00	
Bluthenthal Sup. Co.	D. SE¼ NW¼	40	600.00	
Same	D. SW¼	160	2200.00	
W. E. Massey	P. N½ SE¼	80	1200.00	
Bluthenthal Sup. Co.	P. S½ SE¼	80	600.00	
	Section 35, Township 8S Range 5 West			
W. E. Massey	D. Pt. N½ SE¼	72.14	360.70	
Bill Joslyn	P. NW¼ SW¼ NE¼	10	50.00	
W. E. Massey	D. Pt. N½ NW¼	61.81	309.05	
[fol. 12g]	**Section 35, Township 8S Range 5 West**			
Gould Coop Gin Co.	P. Pt. NW¼	3.05	15.25	
Valley Ice & Bot. Co.	D. Pt. NW¼	.10		
W. E. Massey	D. Pt. S½ SW¼ NW¼	18	90.00	
Belle Joslyn	P. Ery N½ S½ NW¼	11.66	58.30	
W. E. Massey	D. Pt. N½ S½ NW¼	18.34	90.00	
State	D. Pt. NE¼ SW¼	.20	1.00	
State	D. Pt. NE¼ SW¼	.12	.60	
Ed Jones	P. N. & W. Dg & Sc. Rd. NW¼ SW¼	4	20.00	
A. L. Nuchols	P. Pt. SW¼	6.25	31.25	
Bank of Gould	P. Pt. SW¼	.13	.65	
C. H. Holthoff	P. Pt. SW¼	44.95	234.40	
R. L. Grouger	P. Pt. SW¼	.25	1.25	
L. P. Canady	D. P. SW¼	.13	.65	
T. H. & W. E. Free	P Pt. SW¼	.50	2.50	
Stewart Drug Co.	P Pt. SW¼	.15	.75	
W. M. Zachriach	P Pt. SW¼	.02	10.00	
C. H. Holthoff	P Pt. SW¼	4.25	21.25	
A. L. Nuchols	P Pt. SW¼	6.80	34.35	
American Bldg. & Loan Assn.	P Pt. N. D. G. & Sc Rd. NW¼ SW¼	2	10.00	
E. L. Stewart	P Pt. N. D. G. & Sc. Rd.	1.75	8.75	
American Bldg. & Loan Assn.	P. Pt. N & W. Dg & Sc. Rd. NW¼ SW¼	5.75	28.75	
C. H. Holthoff	P. Pt. N & W. DG & Sc. Rd. NW¼ SW¼	7.25	36.25	
C. H. Holthoff	P. Pt. Ery & SG Rd NW¼ SW¼	2.45	12.25	
Mrs. Laura Strong	P Pt. N. D. G. & Sc. Rd. NW¼ SW¼	.25	1.25	
Am. Bldg. & Loan Assn.	D. Pt. N. D. G. & Sc. Rd. NW¼ SW¼	1	5.00	
E. R. Collins	P. Pt. NW¼ SW¼	2.50	12.50	
C. H. Holthoff	P. Wry SE¼	42	210.00	
Mrs. Allen Biggs	D. Wry SE¼ SE¼	10	50.00	
D. V. Leatherman	P. Pt. NW¼	6.90		

[fol. 13] IN LINCOLN CHANCERY COURT

[Title omitted]

AMENDMENT TO COMPLAINT—Filed May 7, 1938

Referring to the separate answer of A. J. Johnson and all other landowners similarly situated, the plaintiffs allege that none of the holders of the certificates of indebtedness issued by said District was made a party to the suit referred to in the answer of the said A. J. Johnson et al., and the decree therein was null and void because made without the presence before the court of the real parties in interest. Afterwards the State Bank & Trust Company of Wellston, Missouri, which was the holder of a large number of certificates of indebtedness issued by said District brought suit in the United States District Court for the Western Division of the Eastern District of Arkansas against the said Kersh Lake Drainage District, and in said suit recovered judgment on the 1st day of November, 1935, for $54,655; and thereupon it brought suit in the said United States District Court for a mandatory injunction to compel the Commissioners of the District to collect the taxes levied upon the assessment of benefits. The said District answered in said suit, denying that the assessments of benefits bore interest, and alleging that because they did not bear interest, the total amount of the assessment of benefits had been paid in full. This issue was submitted to the court on the 22nd day of December, 1936, and decided in favor of the plaintiff, the court holding that said assessment of benefits bore interest at the rate of six per cent per annum, so that the principal of said benefits has scarcely been touched, and practically the whole amount [fol. 14] of $292,191.90 remains due and unpaid; all of which will appear by a certified copy of the decree in said case, which is hereto attached as exhibit "A" and made a part hereof. The Kersch Lake Drainage District took an appeal from said decree to the United States Circuit Court of Appeals of the Eighth Judicial Circuit, where it was affirmed.

The plaintiffs therefore plead said decree as a conclusive adjudication of the point raised by the answer of the said A. J. Johnson, et al.

E. W. Brockman, Attorney for Plaintiff.

[fol. 15] EXHIBIT "A" TO AMENDMENT TO COMPLAINT

IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

STATE BANK & TRUST COMPANY OF WELLSTON, MISSOURI, Plaintiff,

vs.

KERSCH LAKE DRAINAGE DISTRICT OF JEFFERSON, LINCOLN and Desha Counties, T. H. Free, Claude H. Holthoff, and Emmett Warren, as Commissioners of Said District, L. T. Sallee, County Clerk of Jefferson County, N. M. Ryall, County Clerk of Lincoln County, N. D. Newton, County Clerk of Desha County, Garland Brewster, Collector of Jefferson County, W. A. Dodds, Collector of Lincoln County, and H. L. Clayton, Collector of Desha County, Defendants.

Final Decree

This cause coming on for final hearing, the plaintiff appears by Rose, Hemingway, Cantrell & Loughborough, its solicitors, and the defendants appear by Mr. E. W. Brockman, their solicitor, and the cause being submitted to the Court upon documentary evidence and upon the argument of counsel, the defendants asked the following declarations of law and fact:

[fol. 16] Findings of Fact

1. The assessment of benefits made and confirmed November 13, 1912 in the total sum of $293,191.90 in pursuance of Act 279 of the Acts of the General Assembly of the State of Arkansas for the year 1909 as amended by the Acts of 1911 were made payable over a period of twenty (20) years, and the postponed installments of benefits were to be paid in amounts maturing annually without interest.

2. The tax levied against said lands of the district to the amount of Thirty-nine Thousand ($39,000.00) Dollars forfeited for the non-payment thereof, and the lands sold, purchased by, and now are owned by the district.

3. That the assessment of benefits against a large portion of the lands of the district has been fully paid and the lien against said land discharged.

4. That the defendant district has caused a tax of six and one-half (6½) per cent to be levied against unpaid and unused benefits assessed against said lands and has caused the same to be extended upon the tax books, to be collected in the year 1937.

That the plaintiff seeks to require additional tax to be levied and collected from those lands, the original assessment on which lands has been fully paid and the lien thereon discharged.

Declarations of Law

1. That at the time of the organization of the defendant district and the making and confirmation of the assessment of benefits, the statute neither expressly nor impliedly provided that the postponed installments of betterments should bear interest, and no statute enacted since so provides.

2. That the plaintiff should be required to have sale made of all lands owned by the district, and proceeds arising therefrom applied to the satisfaction of its judgment, before an additional levy should be made against the benefits.

[fol. 17] 3. That the plaintiff under no circumstances, should have a mandatory injunction against the defendants, except to have a tax levied and extended against the unpaid assessment of benefits and against those lands wherein the assessment of benefits has not been fully paid.

4. The imposition of interest upon the postponed installments of betterments increases the original assessment made and amounts to the taking of property without due process and is in violation of the Constitution of Arkansas, Article 2, Section 8, and the Constitution of the United States, Article 14, Section 1.

5. That plaintiffs are not entitled to have the assessments of benefits raised to the amount of six per cent on the postponed installments of betterments, the right thereto having been barred by the three year statute of limitation.

6. That the court is without authority to fix a fee for plaintiff's attorneys on the contract sued on.

7. That each tract of land is liable only for the amount of the benefits originally made against the respective tract, and not liable for the total assessment against the whole district.

[fol. 18] These declarations were refused by the Court, and the defendants excepted. Thereupon the Court makes the following:

Findings of Fact

The plaintiff is a corporation duly organized under the laws of the State of Missouri.

The defendant district was, on the 24th day of August, 1912, duly organized by the Circuit Court of Jefferson County under the Act entitled "An Act to provide for the creation of drainage districts in this State," which was approved on the 27th day of May, 1909, as amended by Acts of 1911 and 1913.

The district embraces lands in Jefferson, Lincoln and Desha Counties. The Commissioners elected W. J. Parks as its engineer, and he made plans which were approved by the [fol. 19] Board. The Commissioners then made an assessment of benefits which amounted to $293,191.90, and which bore interest at the rate of six per cent per annum. The district let the work by contract, paying the contractors as the work progressed by negotiable certificates of indebtedness as authorized by Section 3623 of Crawford & Moses Digest. The total amount of the certificates of indebtedness issued amounted to $181,500.00, which were payable serially through the years 1920 to 1934. They were issued on engineers' estimates as the work progressed. These certificates of indebtedness bore interest at the rate of six per cent per annum and were negotiable instruments, payable to bearer.

It was first estimated that the work could be done for $135,000.00, and an annual tax was levied by the Circuit Court of Jefferson County of three per cent per annum, beginning at the annual collection of taxes on the first Monday of January, 1914. The taxes were collected at that rate from the year 1914 to 1916, inclusive. In that year the rate of taxation was raised to three and eight-tenths per cent per annum, and the taxes were collected at that rate from the year 1917 to 1919, inclusive. In 1920 the taxes were raised to six and five-tenths per cent, and they were collected at that rate through the years 1920 and 1021. They were then raised to eight and five-tenths per cent per annum, and collected at that rate through the years 1922 and 1923. They were then lowered to six and five-tenths per cent per annum, which, by the terms of the order of the Jefferson Cir-

cuit Court levying them, was to continue until the last of said certificates of indebtedness should be paid.

The plaintiff brought suit at law in this Court on a portion of said certificates of indebtedness. This suit was transferred to equity, and such proceedings were had in said cause that on the 1st of November, 1935, judgment was rendered therein in favor of the plaintiff for $54,655.00, which bears interest at the rate of six per cent per annum until paid.

[fol. 20] In addition to the amount of said judgment, Lillian Iddings, holding certificates of indebtedness of said district, numbered 211 to 214, inclusive, 242 to 245, inclusive, and 311 to 314, inclusive, each for $500.00, and one coupon for $50.00, has filed her intervention herein asking for the allowance of said claim, which is hereby allowed, and it is decreed that she have and recover of the defendant district the sum of $3,222.24 with interest thereon at the rate of six per cent per annum until paid.

[fol. 21] The defendant district paid all certificates of indebtedness as they matured annually up to 1929, when it ceased to pay the principal, but continued to pay the interest thereon up to August 1, 1932.

Nothing has been paid upon the judgment recovered by the plaintiff nor upon the certificates of indebtedness held by the intervener.

Upon this state of facts the court made the following:

Declaration of Law

The plaintiff and interveners are entitled to maintain this suit and to a mandatory injunction compelling the defendant commissioners and the defendant County Clerks and County Collectors to perform their duties in the collection of the drainage taxes upon the lands in suit.

It is Therefore, Considered, Ordered and Decreed that a mandatory injunction issue requiring the defendant County Clerks, N. M. Ryall and N. D. Newton to extend upon the tax books of their respective counties a tax of six and one-half per cent of the benefits assessed against each tract of land, railroad and tramroad in the district for each of the years 1936 and the following years until the whole of this decree has been satisfied, and that the said W. A. Dodds, as collector of Lincoln County, and H. L. Clayton, Collector of Desha County, be required to collect said drainage tax

along with the County and State taxes, and to pay the same over to the Clerk of this Court until the sums hereinbefore mentioned have been paid to the plaintiff and to the interveners.

It is Further Considered, Ordered and Decreed that the defendants, T. H. Free, Claude H. Holthoff and Emmett Warren, as Commissioners of said district be required to [fol. 22] institute suits for the collection of all delinquent taxes of said district, and to prosecute the same with due diligence to a conclusion, and to see that the delinquent lands are sold promptly under the decree of foreclosure, and that they be required to do all things necessary as commissioners of said district to insure the prompt collection of the drainage taxes; and the said Commissioners of said district are deemed receivers of this court, and as such they are required to perform all their duties as such commissioners with due diligence, and report their doings to this court on the 1st day of June and December of each year, reporting all taxes collected and what action they have taken to enforce the collection of delinquent taxes.

It is Further Ordered that the said defendant commissioners pay out none of the funds of said district without an order of this court authorizing them to do so.

It is Further Ordered that said commissioners be required to file a report showing all sums collected and paid out by them since the day when the district defaulted in the payment of principal or interest; showing the number of bonds and coupons which they have purchased and the amounts paid therefor; what bonds or coupons of the district are or have been held by them, or any of them, individually or as members of the Board; whether any bonds held by them individually have been paid by the district, and, if so, when such payment was made and the amount thereof; and whether all bonds which have been paid with the funds of the District have been cancelled.

(Signed) John E. Martineau, Judge.

A true copy I certify:
Sid B. Redding, Clerk, By Sue Jones, Deputy Clerk.

[File endorsement omitted.]

Endorsed: "Filed Dec. 22, 1936. Sid B. Redding, Clerk."

[fol. 23] IN LINCOLN CHANCERY COURT

[Title omitted]

ANSWER TO AMENDMENT TO COMPLAINT—Filed May 12, 1938

The defendant denies that in the suit of A. J. Johnson against the plaintiff district that the holders of bonds of said district were either necessary or proper parties; that whether or not the State Bank & Trust Company of Wellston, Missouri obtained a judgment against the Kersh Lake Drainage District on the first day of November, 1935 for $54,655.00 would be material to the issues involved in this cause.

Furthermore, that if the United States District Court through its mandatory conjunction compel the Commissioners of the district to collect further taxes levied upon the benefits and it held in said order that the assessment of benefits bore interest and were therefore not paid and would likewise not be material in this issue so far as the complaint is concerned. That a decision by the Federal Court on this issue would be unnecessary and not material for the purpose of collecting said judgment because there was at all times mentioned in the pleadings hereof outstanding and uncollected assessment of benefits in favor of said district as follows:

A balance of the original assessment made in 1912	$52,119.40
To an additional assessment of 1924	53,082.22
Total outstanding benefits uncollected	$105,201.62

Wherefore, the defendants pray as in his original answer the prayer of the complaint be denied and for such other relief as in this court he is entitled.

A. J. Johnson.

[fol. 24] *Duly sworn to by A. J. Johnson. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 25] IN LINCOLN CHANCERY COURT

[Title omitted]

AMENDMENT TO COMPLAINT—Filed June 30, 1938

The plaintiffs, by way of amendment to their complaint herein, say:

That on the 24th day of May, 1935, the State Bank & Trust Company of Wellston, Missouri, brought suit in the United States District Court for the Western Division of the Eastern District of Arkansas, seeking to recover judgment from the Kersh Lake Drainage District upon negotiable certificates of indebtedness issued by it to the contractors doing the work of improvement. Said District answered, setting up all the defenses which are now being urged in this case, and the defendant, Arthur J. Johnson, appeared in person and filed an intervention therein, setting up the same matters that are now being urged by him and the other landowners as a defense to this suit. Said case was transferred to the Chancery docket, and was brought to trial on the 1st day of November, 1935, with the result that all of the defenses now urged were overruled and a decree was entered in favor of the plaintiff for the sum of $54,655.00, as will appear by a transcript of all the pleadings and of the decree in said case herewith filed and marked exhibit "A" to this amendment.

[fol. 26] The said District appealed from said decision to the United States Circuit Court of Appeals of the Eight-Judicial Circuit. In said Court it urged as a defense to the proceedings all the matters now set up as defenses to this case, and such proceedings were had therein that the contentions of said District were overruled. Said decree was affirmed in an opinion rendered on the 27th day of August, 1936, as will appear by reference to 85 Fed. (2d) 643.

Thereupon on January 4, 1936, the said State Bank & Trust Company of Wellston, Missouri, brought suit in the United States District Court of the Western Division of the Eastern District of Arkansas, against the said Kersh Lake Drainage District, its commissioners and the county clerks and county collectors of said three counties, for the purpose of obtaining a mandatory injunction requiring the said commissioners to act as receivers of the said United States District Court, and to require the County Clerks to spread

the drainage tax levied by the Circuit Court of Jefferson County on behalf of the said District on the tax books of the respective counties and requiring the collectors of said counties to collect said taxes, and to pay them over under the orders of the court. The defendants appeared and set up as a defense to said suit all the matters which are now urged by the defendants herein, excepting such as had been adjudicated on the former appeal. Such proceedings were had therein that on the 29th day of December, 1936, said District Court entered its final decree, requiring the commissioners of the District to act as receivers of the court, and requiring the county clerks to enter the drainage taxes of said District upon the tax books of the respective counties, and requiring the collectors of said counties to collect said taxes and pay the proceeds over to the plaintiff, as will [fols. 27-64] appear by a certified transcript of all of said pleadings and decree, which is herewith filed as exhibit "B" and made a part hereof.

From said decree the parties defendant prayed an appeal to the United States Circuit Court of Appeals for the Eighth Judicial Circuit where all of the defenses now set up in this case were presented fully to said Circuit Court of Appeals, which on the 23rd day of November, 1937, affirmed the decree of the court below as will appear by reference to its opinion, which is set forth at large in 92 Fed. (2d) 783.

The plaintiff, therefore, says that the foregoing decisions of the United States District Court for the Western Division of the Eastern District of Arkansas, and of the United States Circuit Court of Appeals for the Eight- Judicial Circuit constitute judgments binding upon said District and all the landowners therein, and upon the officials of said counties therein named, and their successors in office, and they plead said decrees as res judicata of all of the questions now sought to be raised by the defendants in this case.

E. W. Brockman & Rose, Hemingway, Cantrell & Loughborough, Solicitors for Plaintiff.

[fol. 65] EXHIBIT "A" TO AMENDMENT TO COMPLAINT

* * * * * * *

IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

In Equity. #2788

STATE BANK & TRUST COMPANY OF WELLSTON, MISSOURI, Plaintiff,

vs.

KERSH LAKE DRAINAGE DISTRICT OF JEFFERSON, LINCOLN AND DESHA COUNTIES, T. H. Free, Claude H. Holthoff, and Emmett Warren, as Commissioners of Said District; L. T. Sallee, County Clerk of Jefferson County; N. M. Ryall, County Clerk of Lincoln County; N. D. Newton, County Clerk of Desha County; Garland Brewster, Collector of Jefferson County; W. A. Dodds, Collector of Lincoln County, and H. L. Clayton, Collector of Desha County, Defendants

BILL OF COMPLAINT

The plaintiff is a corporation duly organized and doing business under the laws of the State of Missouri. The defendant, Kersh Lake Drainage District of Jefferson, Lincoln and Desha Counties, is a local improvement district and a quasi corporation, duly organized under the laws of the State of Arkansas. The other defendants are all citizens of Arkansas and inhabitants of this division of this district.

The State Bank & Trust Company of Wellston, Relator herein, brought suit in this Honorable Court to recover judgment upon certain certificates of indebtedness issued by the Respondent, The Kersh Lake Drainage District. Said suit was brought on the law side of the Court, buy was duly transferred to the equity docket, and such proceedings were had therein that on the 1st day of November, 1935, the Court rendered a judgment in favor of the plaintiff for the sum of $54,655.00, which judgment is still in force and nothing has been paid thereon.

[fol. 66] Said District was duly organized on the 24th day of August, 1912, under the general Drainage Act of the State

of Arkansas, approved on the 27th day of May, 1909. It duly made an assessment of benefits amounting to $293,-191.90, and it issued negotiable certificates of indebtedness, bearing interest at the rate of six per cent per annum, to the contractors doing the work to the amount of $181,-500.00, which was the total cost of the improvements. By the terms of the Act under which the District was created, and also by the terms of Act #467 of the Acts of the General Assembly of the State of Arkansas of the year 1919, said benefits bore interest at the rate of six per cent per annum. Since the year 1924 the drainage taxes levied have been at the rate of six and one-half per cent. For a short time previous they had been at the rate of eight per cent, and prior to that time they had been three per cent, so that the total amount levied has not been in excess of the interest on the assessment of benefits. The total amount of drainage taxes paid is $268,766.35, which is not more than the interest upon said assessment of benefits. Nevertheless the said District and its commissioners have claimed that the assessment of benefits has been exhausted, and have instructed the County Clerks of the several counties aforesaid not to extend the taxes upon the tax books. In point of fact, the whole of said assessment of benefits remains still uncollected.

[fol. 67] The petitioner, therefore, prays for a mandatory injunction requiring the several county Clerks hereinbefore mentioned to extend the said taxes upon the tax books as required by the order — the *the* Circuit Court of Jefferson County entered on the 13th day of September, 1924, each year at the rate of six and one-half per cent until an amount has been collected sufficient to pay the judgment of the relator aforesaid; that the said collectors of the several counties be required to collect said drainage taxes each year until an amount has been raised sufficient to pay the judgment of the plaintiff with all costs, and that if any property owners fail to pay their drainage tax the defendant, Kersh Lake Drainage District, and its Commissioners be required to institute suit for the collection of the delinquent taxes, and to prosecute the same with due diligence to a conclusion, and to see that the delinquent lands are sold promptly under the decrees of foreclosure, and that they be required to do all things necessary as Commissioners of said District to insure the prompt collection of the drainage taxes; that said commissioners of said district be deemed receivers as

is provided in Act No. 46 of the Acts of the General Assembly of the State of Arkansas of the year 1933 and settled by the decision of the Supreme Court of said State in the case of Dickinson v. Mingea, decided on the 9th day of December, 1935; that all the defendants be required to perform their duties in the premises with due diligence and report their doings to this honorable court at times to be fixed by it; and for such other relief as may be deemed equitable.

Rose, Hemingway, Cantrell & Loughborough, by George B. Rose, Solicitors for Plaintiff.

A true copy I certify: Sid B. Redding, Clerk, by Sue Jones, Deputy Clerk. Filed Jan. 4th, 1936, Sid B. Redding, Clerk.

[fol. 68] IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

STATE BANK & TRUST COMPANY OF WELLSTON, MISSOURI, Plaintiff,

vs.

KERSH LAKE DRAINAGE DISTRICT OF JEFFERSON, LINCOLN AND DESHA COUNTIES, T. H. Free, Claude H. Holthoff, and Emmett Warren, as Commissioners of Said District, L. T. Sallee, County Clerk of Jefferson County, N. M. Ryali, County Clerk of Lincoln County, N. D. Newton, County Clerk of Desha County, Garland Brewster, Collector of Jefferson County, W. A. Dodds, Collector of Lincoln County, and H. L. Clayton, Collector of Desha County, Defendants

ANSWER

Come the defendants and for answer to the Bill of Complaint state:

That they deny each and every material allegation set out in said complaint.

Further answering the defendants state:

That they deny that the Kersh Lake Drainage District duly made an assessment of benefits amounting to $293,191.90, and that it issued negotiable certificates of indebt-

edness bearing interest at the rate of six per cent per annum to the contractors doing the work, to the amount of $181,500.00 which was the total cost of the improvement. They deny that under the terms of Act 476 of the Acts of the General Assembly of the State of Arkansas of the year 1919 said benefits bore interest at the rate of six per cent per annum.

They deny that since the year 1924 taxes levied have been at the rate of six and one-half per cent. They deny that for a short time previous they had been at the rate of eight per cent per annum, and prior to that time they had been [fol. 69] at the rate of three per cent, so that the total amount levied has not been in excess of the interest on the assessment of benefits.

Answering further the defendants state:

That at the time the original cost of the District was determined by a judgment duly rendered in the Jefferson Circuit Court, and benefits confirmed in a sufficient amount to pay said cost, said court did not in said judgment find that the assessment of benefits should bear interest, and having found that the amount of taxes levied was sufficient to pay the bonds to the amount of the cost of the improvement, plaintiffs are now barred from claiming interest upon said assessment and not having applied to the Court in apt time for the assessment and collection of interest under Act 467 of the Acts of the General Assembly of the State of Arkansas of the year 1919, they are now barred by the Statute of Limitations, and the defendants therefore plead the Statute of Limitations in bar of recovery.

Defendants further state that the taxes in an amount in excess of the sum necessary to pay the cost of the improvement, as determined by the Jefferson Circuit Court have been fully collected and paid, and that the plaintiffs are bound by the judgment made and rendered in Jefferson Circuit Court, and that the defendants have fully complied with the law relative thereto.

Having fully answered, defendants pray that the plaintiffs take nothing by reason of this action, and that defendants have judgment for their cost herein expended and for other general and proper relief.

E. W. Brockman, Attorney for Defendants.

Filed Jan. 21, 1936, Sid B. Redding, Clerk.

[fol. 70] IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

STATE BANK & TRUST COMPANY OF WELLSTON, MISSOURI, Plaintiff,

vs.

KERSH LAKE DRAINAGE DISTRICT OF JEFFERSON, LINCOLN AND DESHA COUNTIES, T. H. Free, Claude H. Holthoff, and Emmitt Warren, as Commissioners of Said District, L. T. Sallee, County Clerk of Jefferson County, N. M. Ryall, County Clerk of Lincoln County, N. D. Newton, County Clerk of Desha County, Garland Brewster, Collector of Jefferson County, W. A. Dodds, Collector of Lincoln County, and H. L. Clayton, Collector of Desha County, Defendants

AMENDMENT TO ANSWER

Come the defendants and after first obtaining leave of the Court files this amendment to the answer and for cause state:

First. That the defendant District was organized by an order of the Jefferson Circuit Court, and that on March 4, 1913 a judgment was rendered in said court fixing the estimated cost of the improvement and levied a tax upon the property of the District for the purpose of paying said estimated cost as follows:

Bond Issue	$135,000.00
Interest thereon	112,951.00
10% unforeseen contingencies	24,830.21
Total	$272,782.12

That said judgment levied a tax against the property of the District in the sum of $272,782.12 That said judgment appears of record in Civil Court Record Book "X" at page 350 of the Records of Jefferson County, Arkansas, reference to which is hereby made and same made part hereof.

Second. That under Section 3590 of Crawford & Moses' Digest of the Statutes of the State of Arkansas, which was the law at the time of the organization of the District, and at the time the assessment of benefits in the sum of $293,-

191.90 was made, and it was the duty of said court at the time, or within sixty days thereafter to fix the amount of interest to be borne by said installments of assessments not to exceed six per cent (6%). That the court did not [fol. 71] determine that it was necessary to collect interest on said installments of assessments, and did not fix a rate of interest thereon. That said court having failed to fix the rate of interest at the time of confirmation, or within sixty days after the confirmation of assessments, the plaintiffs herein and all others holding Certificates of Indebtedness issued by said District are barred by the limitation contained in Section 3590 of Crawford & Moses' Digest, and having delayed the request for more than twenty years, cannot now be heard to complain, and the defendant therefore pleads said Statute in bar of a recovery herein.

Third. That the plaintiff in its complaint invokes the aid of Act 467 of the Acts of the General Assembly of the State of Arkansas for the year 1919, which appears in Crawford & Moses' Digest as Section 3656. That said Act among other things provides that, "The interest need not be computed until necessary to be sure that the collections shall not exceed the total amount of benefits and interest; or the interests may be first collected." That on July 27, 1919 the commissioners, then acting on behalf of said defendant, issued Certificates of indebtedness in excess of the value of the assessed benefits and if plaintiff was ever entitled to the benefits provided by said Act, it became necessary to have the Jefferson Circuit Court determine the necessity for the collection of interest, if any, within sixty days after the passage of said Act, to-wit, March 28, 1919, and plaintiff having failed to invoke the benefit of said Act within the time provided by law is now barred by the limitation therein contained and defendants plead same in bar of a recovery herein. That said Act No. 467 of the Acts of the General Assembly for the year 1919 is unconstitutional and void for the reason that it is retroactive and seeks to deprive the owners of land in said District of their property without due process of law, and by imposing upon owners of said land obligations in excess of that which was imposed at the time of the organization of the District, and in pursuance of a petition seeking in the organization of said District.

[fol. 72] Fourth. Defendants further allege that Act 534 of the Acts of the General Assemble for the year 1921, Section 4 thereof, provides as follows: "No suit for the collection of delinquent taxes shall be brought after three years from date same became delinquent." The defendant pleads said Act 534 in bar of a recovery in this action.

Fifth. Defendants further allege that Section 12 of Act 279 of the Acts of the General Assemble for the year 1909 as amended and appearing in Crawford & Moses Digest as Section 3620 among other things contains the following: "Provided that the total levy or levies shall in no case exceed the value of the benefits assessed on said property, and the performance of such duties may be enforced by mandamus in the instance of any person or board interested." That the full value of the benefits assessed on all taxable property in the District has been levied, collected and legally (disbursed), and defendants therefore plead said Section 3620 of Crawford & Moses' Digest in bar of a recovery herein.

Sixth. That the commissioners of the defendant District have levied to date upon the value of the assessed benefits a total tax of $308,665.65, and that the amount of delinquencies at this date is approximately $39,899.30. That said commissioners have at regular intervals caused suits to be filed in the State Court for the purpose of selling the delinquent lands, and that at this time the District owns lands on which the assessment of benefits made, together with penalties and interest, amounts to $39,899.30. That said lands are held subject to the orders of the court for the payment of any obligations justly due from said District.

Seventh. That there has been levied and extended against the value of the assessed benefits in said District a total of One Hundred Eleven per cent (111%), and that as a result of said levy and extension of taxes a large number of tracts of land in the District have fully paid the entire value of assessed benefits against said lands and that said property owners obtained a decree in the Lincoln Chancery Court in the case of W. A. Fish, et al. vs. Kersh Lake Drainage District on June 15, 1932, enjoining and restraining the Com-
[fols. 73-76] missioners of the defendant District from levying or extending any tax against those lands, the assessed benefits of which has been fully paid. That said decree ap-

pears of record in Equity Record "I" at page 23 of the Records of Lincoln County, Arkansas, reference to which is hereby made and same made part hereof. The defendants furthe. plead that they have done and performed every act encumbent upon them by the law relative to the assessment, levy, collection and (dispursement) of taxes provided by law in said District, and that the plaintiff having delayed for a period of some sixteen years after its right accrued, if at all, is now barred by laches and defendant pleads same in bar of a recovery herein.

Wherefore premises considered, defendants pray that this amendment be taken and considered as part of the original answer herein filed, and for other general and proper relief.

E. W. Brockman, Attorney for Defendants.

Filed February 18th, 1936, Sid B. Redding, Clerk.

[fol. 77] IN LINCOLN CHANCERY COURT

[Title omitted]

DEFENDANT'S ANSWER TO PLAINTIFF'S AMENDMENT TO COMPLAINT FILED 30TH DAY OF JUNE, 1938—Filed August 20, 1938

As answer to the amendment to the complaint of the plaintiff filed on June 30th, 1938 the defendant denies each and every material allegation in the amendment.

Defendant specifically denies that he appeared in a certain cause referred to in the complaint and set up as a defense to said suit wherein the State Bank and Trust Company of Wellston, Missouri and Kersh Lake Drainage District by its Board of Commissioners and others were defendants, all matters which are now urged by the defendant herein.

Pleading further defendant states that as an attorney he filed an intervention in a certain cause filed the 24th day of May, 1935 by the State Bank and Trust Company of Wellston, Missouri against Kersh Lake Drainage District in which the plaintiff sought a judgment on the certificates of indebtedness issued by the District. That the matters which are now urged by this defendant as defense to this suit were

not matters in response to the complaint of the plaintiff in said cause and could not and were not taken into consideration by the court. No issue could be made of the defenses now pleaded in said cause as is evidenced by the findings of the court and the decree rendered therein in November 1935. In said decree it was adjudicated that the defendant district was indebted to the said parties plaintiff in the sum of $54,655.00. This defendant denies that that judgment is [fol. 78] an adjudication of the questions herein involved offered as a defense in a suit to foreclose its tax lien. This defendant specifically denies any connection whatever in the cause referred to in the complaint as the State Bank and Trust Company of Wellston, Missouri brought in the United States District Court on January 4th, 1936 against the Kersh Lake Drainage District, et al.

Defendant denies that the judgment in said cause precluded the defense offered by the defense herein for the reason that *that* in that cause after same was submitted to the court upon the statement of facts that the defendant Kersh Lake Drainage District had no means to pay the judgment previously rendered by the court except from a delinquent tax list aggregating $38,899.35. This statement appears in the transcript paragraph 222 page 124 of cause No. 10,572 in the United States Circuit Court of Appeals. Whereas the facts and the truth of the records is heretofore answered by this defendant that at the time the foregoing suit was brought and at all times previous and subsequent thereto there remains outstanding and uncollected benefits of the District as follows:

Balance on original assessment made in 1912	$52,119.40
Additional assessment made in 1924	53,082.22
Total benefits outstanding and uncollected	$105,201.62

That the decree referred to by the plaintiff herein is not an adjudication of the issues involved in this defense but that by reason of the material variance in the facts constitutes a fraud on the District and other land owners in the District.

Defendant pleading further states as a defense to the tax now levied and involved in this suit that no additional or further levy of taxes has ever been made against his lands and none was made for the years set out in his complaint and the tax is therefore void. That the only levy of taxes in the

plaintiff District was made by the Jefferson Circuit Court and that the order of said court levying said tax was in words and figures as follows:

[fol. 79] IN THE JEFFERSON CIRCUIT COURT, MARCH TERM

No. 4552

D. HOPSON, et al., KERSH LAKE DRAINAGE DIST.,

vs.

EX PARTE

Tuesday, March 4th, 1913.

"In the matter of the assessment of a tax upon the real property, the Railroads, Tram roads, corporate and Public roads in the Kersh Lake Drainage (Drainage) District of Jefferson, Lincoln and Desha Counties, Arkansas, for a sum sufficient to pay the improvement in said District with ten per centum added for unforseen contingencies.

"The Commissioners of said District having called upon the Circuit Court of Jefferson County, Arkansas, to assess a tax upon the real property, railroads, tram roads, corporate and public roads of the Kersh Lake Drainage District of Jefferson, Lincoln and Desha Counties, Arkansas, which tax shall be sufficient to pay the estimated cost of the improvement with ten per cent. (10%) added for unforseen contingencies and to be paid by the real property, railroads, tram roads, corporate and public roads in the district in the proportion to the amount of the assessment of the benefits thereon.

"Now, therefore it is hereby considered, ordered and adjudged by the Circuit Court of Jefferson County, Arkansas, that there shall be assessed upon the real property the railroads, tram roads, corporate and public roads of the Kersh Lake Drainage District a tax of $272,782.12, which is the estimated cost of the improvement in said drainage district, being the bond issue, $135,000.00 with the accrued interest thereon with ten per centum (10%) added for unforseen contingencies, which tax is to be paid by the real property, railroads, tram roads, corporate and public roads in said district in the proportion to the amount of the assessment of benefits thereon, and which tax shall be a lien upon all the real property, railroads, tram roads, corporate and public

roads in said district from this date and shall be entitled to preference over all demands, executions, encumbrances or liens whatsoever created, and shall continue until such assessments with any penalty and costs that may accrue thereon shall have been paid."

Defendant pleading further states that if he is in error in the District's authority to increase his betterment and increase his taxes that he should have a statement of the amount of such increase, a statement showing the total increase, the increase made and the balance due and an opportunity to pay before a judgment is rendered and his property sold.

Wherefore, the defendant prays that in addition to the prayer in his original answer and the amendment thereto the prayer of the complaint be denied; that if he is in error in the authority of the District to increase his taxes that he be given a statement showing the increase, and for such other relief as in this court he is entitled.

A. J. Johnson, Attorney.

[fol. 80] *Duly sworn to by A. J. Johnson. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 81] EXHIBIT TO ANSWER

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHT- CIRCUIT, MAY TERM, 1936

No. 10572

KERSH LAKE DRAINAGE DISTRICT OF JEFFERSON, LINCOLN AND DESHA COUNTIES, ARKANSAS, Appellant,

vs.

STATE BANK AND TRUST COMPANY OF WELLSTON, MISSOURI

Appeal from the District Court of the United States for the Eastern District of Arkansas

Monday, August 31, 1936.

This cause came on to be heard on the transcript of the record from the District Court of the United States for

the Eastern District of Arkansas, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court, in this cause be, and the same is hereby, affirmed with costs; and that the State Bank and Trust Company of Wellston, Missouri, have and recover against the Kersh Lake Drainage District of Jefferson, Lincoln and Desha Counties, Arkansas, the sum of Twenty Dollars for its costs herein and have execution therefor.

August 31, 1936.

A true copy:

Attest:

E. E. Koch, Clerk, U. S. Circuit Court of Appeals, Eight- Circuit.

[fols. 82-84] EXHIBIT TO ANSWER

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHT- CIRCUIT, NOVEMBER TERM, 1937

No. 10879

KERSH LAKE DRAINAGE DISTRICT OF JEFFERSON, LINCOLN AND DESHA COUNTIES, ARKANSAS, et al., Appellants,

vs.

STATE BANK AND TRUST COMPANY OF WELLSTON, MISSOURI

Appeal from the District Court of the United States for the Eastern District of Arkansas

Tuesday, November 23, 1937.

This cause came on to be heard on the tramscript of the record from the District Court of the United States for the Eastern District of Arkansas, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court, in this cause be, and the same is thereby, affirmed with costs; and that State Bank and Trust Company of Wellston, Missouri, have and recover against Kersh Lake Drainage District of Jefferson, Lincoln, and Desha

Counties, Arkansas, et al., the sum of Twenty Dollars for its costs herein and have execution therefor.

November 23, 1937.

A true copy:

Attest:

E. E. Koch, Clerk, U. S. Circuit Court of Appeals, Eighth Circuit.

Filed August 27, 1938. Homer L. Johnson, Clerk.

[fol. 84a] IN LINCOLN CHANCERY COURT

[Title omitted]

AMENDMENT TO SEPARATE ANSWER OF A. J. JOHNSON—Filed January 16, 1938

The defendant is the owner of the S. W. ¼ of Section 8, township 9 south, range 5 west, in Kersh Lake Drainage District. The benefits to accrue to this land were assessed in 1912 at $1600, The Defendant paid the full amount, $1600, prior to 1931.

In 1931 the commissioners raised the assessment on the defendant's land, pretending to do so under the authority of Act No. 177 approved March 13, 1913, and Act No. 467, approved March 28, 1919, and levied a tax on the increase. In a suit brought by defendant against the district, the Chancery court of Lincoln county found and held, on the pleadings and evidence, that the total possible benefit accruing to defendants land was $1600, that this amount had been paid in full and that the additional assessment was null and void. The court rendered a decree perpetually enjoining the district from assessing any additional benefits on defendants land, and from collecting any further drainage taxes from such land, The defendant pleads this decree as res adjudicata of the total amount of benefits accruing to defendant's land, and of the payment of such benefits in full.

At the same time and by the same authority, the commissioners raised the assessments of benefits on other lands of this defendant and the lands of other owners similarly situated in the district and levied a tax on the increase. In

a suit brought by W. A. Fish and others against the district, the chancery court of Lincoln county found and held on the pleadings and evidence the total possible benefits accruing to each separate parcel of land and the amount so found by the court was paid; said lands are specifically and correctly described in the decree with the amount of benefits made a part hereof; the court rendered its decree enjoining the district from collecting additional Benefits on [fol. 84aa] said lands. Defendant pleads the decree rendered by the chancery court as res adjudicata of the total amount of benefits to all lands specifically described in said decree and the payment of said benefits in full. Copies of said decrees are attached to the original answer herein.

The mandatory injunction issued by the federal court merely directed the board of commissioners to collect a tax of 6½ per cent on the assessed benefits in the district. There are benefits on the defendants land or the land of other owners herein set out. The order of the federal court therefore, does not affect the defendants land or other lands similarly situated and does not purport to affect it and it furnished no authority to the district to levy a tax on the defendants land. The collection of such a tax would deprive the defendant and others of property without due process of law in violation of the state and federal constitutions.

Copy of the mandatory injunction of the federal court is attached.

Wherefore defendant prays that the complaint as to his lands and the other lands herein described be dismissed and form costs.

A. J. Johnson.

[File endorsement omitted.]

[fol. 84b] Exhibit to Amendment to Answer

It is therefore considered, ordered and decreed that a mandatory injunction issue requiring the defendant county clerks, N. M. Ryall and N. D. Newton to extend upon the tax books of their respective counties a tax of six and one-half percent of the benefits assessed against each tract of land, railroad and tramroad in the district for each of the

years 1936 and the following years until the whole of this decree has been satisfied, and that the said W. A. Dodds as collector of Lincoln county, and H. L. Clayton, collector of Desha county, be required to collect said drainage tax along with the county and state taxes, and to pay the same over to the clerk of this court until the sums hereinbefore mentioned have been paid to the plaintiff and to the interveners.

It is further considered ordered and decreed that the defendants T. H. Free, Claud H. Holthoff and Emmet Warren, as commissioners of said district be required to institute suits for the collection of all delinquent taxes of said district, and to prosecute the same with due diligence to a conclusion, and to see that the delinquent lands are sold promptly under the decree of foreclosure, and that they be required to do all things necessary as commissioners of said district to insure the prompt collection of the drainage taxes; and the said commissioners of said district are deemed receivers of this court, and as such they are required to perform all their duties as such commissioners with due diligence, and report their doings to this court on the 1st day of June and December of each year, reporting all taxes collected and what action they have taken to enforce the collection of delinquent taxes.

It is further ordered that the said defendant commissioners pay out none of the funds of said district without an order of this court authorizing them to do so.

It is further ordered that said commissioners be required to file a report showing all sums collected and paid out by them since the day when the district defaulted in payment of principal or interest; showing the number of bonds or coupons which they have purchased and the amounts paid therefor; what bonds or coupons of the district are or have been held by them of any of them, individually or as members of the board; whether any bonds held by them individually have been paid by the district, and, if so, when such payment was made and the amount thereof; and whether all bonds which have been paid with the funds of the district have been cancelled.

John E. Martineau, Judge.

December 22, 1936.

[fols. 85-116] EXHIBIT TO DISPOSITION OF VICTOR FELLY

The original assessment of benefits made November 12th, 1912 for the Kersh Lake Drainage District was:

$293,191.90

A supplemental assessment of benefits for Kersh Lake Drainage District District made in 1924 is in the sum of $53,082.22

The audit of the affairs of the Kersh Lake Drainage District by J. Doyle Windsor and F. V. McCoy for the State Comptroller on September 13, 1935 shows the following summary to-wit.:

Assessed Benefits	$310,533.85
Taxes levied to date	308,655.65
Delinquent	39,899.30
Assessed Benefits unpaid	52,119.40
Assessed Benefits overpaid	10,351.90
Tax Levied for Collection, 1935	3,100.12

Victor Felly.

[fol. 117] IN LINCOLN CHANCERY COURT

No. 2046

BOARD OF COMMISSIONERS OF THE KERSH LAKE DRAINAGE DISTRICT, Plaintiff,

vs.

DELINQUENT LANDS, Defendant

AMENDED DECREE—February 22, 1939

Now on this the 16th day of January, 1939, a regular adjourned day of the Lincoln Chancery Court for the October, 1938 term, this cause comes on to be heard and comes the plaintiff Board of Commissioners of the Kersh Lake Drainage District by its attorney, E. W. Brockman, of Pine Bluff, Arkansas; and A. J. Johnson appears on behalf of himself and certain other property owners claiming an interest in certain lands mentioned and set out in the separate answer of A. J. Johnson, and no one appearing on behalf of the

other delinquent lands hereafter mentioned or any of them, and no demurrer or pleading having been filed herein by any person other than A. J. Johnson claiming any interest in said lands or any of them, which said lands are hereafter particularly set forth: said cause is heard upon the complaint filed, proof of publication of the notice of and advertisement of said lands, the certified list of delinquent lands filed by the Collector of Lincoln county, Arkansas for the years 1935 and 1936; tax records including said lands for said years; separate answer of A. J. Johnson, with certified copies of the decrees of the Lincoln Chancery Court in the case of A. J. Johnson versus Kersh Lake Drainage District, and in the case of W. A. Fish et al. versus Kersh Lake Drainage District, attached as exhibits to said answer, together with all amendments thereto; and the written statement of Victor Felley; from all of which the court finds:

That C. H. Holthoff, Emmet Warren and T. H. Free are the duly elected, qualified and acting commissioners of the Kersh Lake Drainage District:

That a list of delinquent lands embraced in the Kersh Lake Drainage District showing the supposed owner as the same appears upon the tax books, a description of the prop- [fol. 118] erty and the amount of tax due thereon for the years 1935 and 1936, was duly certified by the Clerk of the County Court of Lincoln County, Arkansas and filed by the Collector of Lincoln County, Arkansas with the Circuit Clerk of said county, and said certified list of delinquent lands was filed with the complaint herein.

That this action has been conducted in the name of Board of Commissioners of Kersh Lake Drainage District; that the published notice of the pendency of this suit was made in the name of Board of Commissioners of Kersh Lake Drainage District vs. Delinquent Lands as required by statute; and that due notice of the pendency of this suit and action has been given by publication weekly for four weeks consecutively before this judgment and decree is entered for the sale of said lands, in the Lincoln Ledger, a newspaper published in Lincoln County, Arkansas, which published notice was in the form required by law and was published for the time and in the manner as required by law as shown by the proof of publication herein duly made by the affidavit of Clyde Grumbles, editor and publisher of said paper, which affidavit shows the dates of the several publications of said notice as therein stated, and at the said period and

at the said dates the said Lincoln Ledger was a newspaper printed and having a bona fide circulation in Lincoln County, Arkansas for a period of more than twelve months next before the date of the first publication of this notice, and that said notice was published weekly in the regular issue in the said Lincoln Ledger for four consecutive weeks, the first publication thereof having been made on November 4th, 1938, the second publication thereof having been made on the 11th day of November, 1938, the third publication thereof on the 18th day of November, 1938, and the fourth publication thereof on the 25th day of November, 1938; said notice stating that all persons, firms or corporations having or claiming any interest in the lands and property therein described were notified that suit was pending in the Lincoln Chancery Court to enforce the collection of said delinquent taxes due said Kersh Lake Drainage District on the list of lands and property hereinafter set forth for the years 1935 and 1936, both inclusive, as shown by the years designated [fol. 119] under each tract or parcel of land and property as mentioned in the complaint, the name of the supposed owner having been set opposite his, her or its land together with the amount due from each tract or parcel of land as drainage tax from the years 1935 and 1936, both inclusive, as shown by the years designated by each parcel or tract of land and property as mentioned in the complaint, together with the penalty of twenty-five (25%) per cent thereon as provided in the Act of the General Assembly of the State of Arkansas, under which the Kersh Lake Drainage District was formed and created, same being Act 279 of the Acts of the General Assembly of the State of Arkansas for the year 1909, and acts amendatory thereof; all of said lands being in Lincoln county, Arkansas, and said notice warning all persons and corporations interested in said lands that they were required to appear within four weeks and make defense to this suit or that the same would be taken for confessed and final judgment be entered directing the sale of said land for the purpose of collecting said delinquent tax, together with the payment of interest, penalty and costs allowed by law, said notice being given under the hand of the Clerk of the Lincoln Chancery Court and under the seal of his office, and was in all things as required by law.

And the court further finds that since the filing of the complaint herein separate answer was filed by A. J. Johnson, claiming to be the owner of the following tract of land

lying and being situated in the county of Lincoln and state of Arkansas, to-wit:

Southwest quarter (SW¼) of Section Eight (8) Township nine (9) South, Range Five (5) West;

it being contended in said answer that the total amount of the original assessed benefits against said lands had been fully paid; that the postponed installments of benefits so assessed did not bear interest and that the lien created against said land by the original assessment of benefits had been fully discharged, in said answer the said A. J. Johnson also contended that the decrees in the cases of A. J. Johnson versus Kersh Lake Drainage District and W. A. Fish et al. versus Kersh Lake Drainage District were res judicata of the issues in this suit. Said answer also contained a prayer for relief for the owner of said land and for [fol. 120] the owners of other lands similarly situated.

The court further finds that certain tracts of land were erroneously included in said complaint and that the taxes assessed against other certain tracts have been paid since the filing of the complaint.

Now, therefore, it is by the court considered, ordered, adjudged and decreed that the complaint herein filed be and the same is hereby dismissed so far as it affects those tracts and parcels of land on which the tax has been paid since the filing of the complaint and as to other tracts and parcels of land erroneously included in said complaint.

The court finds all of the issues against the said A. J. Johnson and other property owners similarly situated, which said issues were set out in the answer filed by A. J. Johnson and amendments thereto.

It is further by the court ordered, adjudged and decreed that the complaint as to any and all of the remaining tracts and parcels of land, except those dismissed for the reason that the tax thereon has been paid since the filing of the suit and those tracts erroneously included in said complaint, therein described and as herein-mentioned be and the same is hereby taken as confessed, and the relief prayed for in said complaint be and the same is hereby in all things granted and the amounts now due the plaintiff by the several tracts of land hereinafter particularly set forth for taxes, penalty and interest at six (6%) per cent per annum as mentioned, be and the same is hereby declared to be justly due and declared and fixed as a first lien upon the

lands against all persons having any interest therein, and an attorney's fee in the sum of One ($1.00) Dollar per tract for each tract or parcel of land hereafter set forth is hereby fixed in favor of plaintiff's attorney and taxed as a part of the costs and is also declared a lien upon the lands hereinafter mentioned; and the Clerk of this Court, C. I. Leek, is hereby appointed Commissioner of this court and is hereby authorized and directed to proceed to sell the lands and property described in the complaint and as hereinafter set forth, on the day to be fixed by the Commissioner, for the purpose of enforcing the collection of the [fol. 121] drainage tax, penalty, interest and costs due said Kersh Lake Drainage District for the years 1935 and 1936, as shown by the years designated under each tract or parcel of land and property as mentioned in the complaint, at the west door of the courthouse in the town of Star City, Lincoln County, Arkansas, at public outcry to the highest and best bidder for cash in hand paid, after advertising said sale as provided by law, which advertisement shall include all of the lands hereinafter described in this decree weekly for two weeks consecutively in some newspaper published in Lincoln County, Arkansas; and if all of said lands are not sold on the day advertised for said period, then said sale shall continue from day to day until all of the lands are sold, and said commissioner shall by proper deed convey to the purchaser the lands so sold, and the title to said lands so sold shall become vested in the purchaser against all others whomsoever, saving as to infants and insane persons having no guardian or curator the right they now have by law to appear and except to said sale within the time fixed by law after their disabilities are removed, and provided that within two years after the rendition of this decree the owner of any of said lands herein can file his petition in said court as provided by law alleging the payment of taxes on the lands for the years for which they were sold, and upon the establishment of this fact have the decree vacated and set aside as to those lands, and further provided that the owners of any of said lands may have the right to redeem any and all of said lands sold at such sale for and during the period fixed by law for redemption.

In case the sum of taxes due together with penalty, interest and costs on said several tracts or parcels of land is not bid for same at sale, the Commissioner is hereby directed to bid off the same in the name of the Kersh Lake

Drainage District, bidding therefor the whole amount due, and in such cases he shall execute his deed therefor conveying such land to the Kersh Lake Drainage District and such deed when duly executed and delivered shall be received as evidence in all cases of an indefeasable title in such purchaser unassialable either in law or equity as provided by [fol. 122] law.

The lands herein referred to together with the name of the supposed owner of the same, the description thereof by parcel, the tax, penalty and interest thereon and total sum due exclusive of attorney's fee, Commissioner's fee and costs, all of said lands being situated in the county of Lincoln, state of Arkansas, are as follows, to-wit:

(for description of lands, see original)

It is further ordered, adjudged and decreed that the Commissioner herein appointed be allowed as compensation for his services herein the sum of One ($1.00) Dollar on each tract sold as mentioned and set out in this decree.

Said Commissioner shall report his actions hereunder to this court as soon as may be for further orders, if any, as may be deemed proper in the premises, and the court retains jurisdiction of this cuase for the purpose of protecting the rights of all parties hereto and of such parties as may be made parties hereafter.

It is further considered, ordered and adjudged that the plaintiff is hereby awarded writ of possession, and the clerk of the court is directed to issue the same for the purpose of enforcing this decree and placing the plaintiff in possession of lands sold and deeded to it by the Commissioner appointed to carry into effect the decree of the court.

The defendant, A. J. Johnson, at the time excepts to the findings and rulings of the court and prays an appeal to the supreme court of the state of Arkansas, which is hereby granted.

Harry T. Wooldridge, Chancellor.

February 22, 1939.

[fol. 123] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 124] IN SUPREME COURT OF ARKANSAS

No. 5501

A. J. JOHNSON, Appellant,

v.

KERSH LAKE DRAINAGE DISTRICT, Appellee

Appeal from Lincoln Chancery Court

JUDGMENT—May 29, 1939

This cause came on to be heard upon the transcript of the record of the chancery court of Lincoln County and was argued by solicitors; on consideration whereof it is the opinion of the court that there is error in the proceedings and decree of said chancery court in this cause, in this: The court erred in holding the lands of appellant subject to an additional tax.

It is therefore ordered and decreed by the court that the decree of said chancery court in this cause rendered be, and the same is hereby, for the error aforesaid, reversed, annulled and set aside with costs; and that this cause be remanded to said chancery court with directions to enter a decree not inconsistent with the opinion herein delivered.

It is further ordered and decreed that said appellant recover of said appellee all his costs in this court in this cause expended, and have execution thereof. Smith, McHaney and Baker, JJ., dissent.

[fol. 125] IN SUPREME COURT OF ARKANSAS

JOHNSON

v.

KERSH LAKE DRAINAGE DISTRICT

OPINION—May 29, 1939

HOLT, J.:

Appellants bring this appeal from the Lincoln Chancery Court.

The Kersh Lake Drainage District, embracing lands in Jefferson, Lincoln and Desha counties, was created by an

order of the circuit court of Jefferson county on August 24, 1912 under Act 279 of 1909. Benefits were assessed against each tract of land in the district in the total sum of $272,782.12, payable in annual installments. A contract for the improvement was let, the work completed and certificates of indebtedness issued to the contractor in payment.

A. J. Johnson, one of the appellants, owned and still owns 160 acres of land in this district and the benefits to which were originally assessed at $1600. Prior to 1931 he had paid installments of these tax benefits in the total sum of $1628.00. The other appellant landowners to this litigation paid the full amount of benefits originally assessed against their lands, but counsel have agreed that such appellants will abide the decision of this court with reference to the Johnson land as controlling as to these other appellants.

In 1931 the Commissioners of this district, acting upon the authority of act 467 of 1919, made an additional assessment against the lands in question, such assessment being the interest on the original assessment as contemplated in the act. This tax levied as additional assessment, on the Johnson land, amounted to $104.

A suit was then filed by Johnson in the Lincoln Chancery Court against the district in which he alleged that the limits of the benefits accruing to his 160 acres of land in the district, amounted to $1600, and prayed that the additional [fol. 126] of benefits made under act 467, supra, be annulled. On October 19, 1931, the court found the issues in favor of Johnson and held that all legally assessed benefits had been paid, annulled the additional assessment, and permanently enjoined the district from collecting any additional taxes on Johnson's land. From this judgment of the court no appeal was taken.

The other appellants here brought a similar suit against the district, praying for similar relief to that granted Johnson, which prayer the court granted on June 15, 1932, and from this judgment of the court no appeal was taken.

The State Bank & Trust Company of Wellston, Missouri, in 1935 filed a suit at law against the Kersh Lake Drainage District in the Federal Court for the Eastern District of Arkansas, in Little Rock, in which it sought to recover a judgment against the district on certain of its certificates of indebtedness which had been assigned to it by the contractor. In this cause the Federal District Court entered a judgment in favor of the trust company against the dis-

trict for $54,655 and this judgment was subsequently affirmed by the Circuit Court of Appeals, (Kersh Lake Drainage District v. State Bank & Trust Company, 85 Fed. 2d 643).

Thereafter the State Bank & Trust Company instituted suit in the Federal Court in Little Rock against the same Commissioners of this same district, joining the county clerks and sheriffs of Jefferson, Lincoln and Desha counties, asking for a mandatory injunction to compel the collection of a tax of 6½ per cent a year on the assessed benefits in the district to pay this judgment. The court issued the mandatory injunction as prayed for as follows: "It is, therefore, considered, ordered and decreed that a mandatory injunction issue requiring the defendant county Clerks, N. M. Ryall and M. D. Newton, to extend upon the tax-books [fol. 127] of their respective counties, a tax of 6½ per cent of benefits assessed against each tract of land, railroad, and tramroad in the district for each of the years 1936 and the following years until the whole of this decree has been satisfied. * * * It is further considered, ordered and decreed that the defendants, T. H. Free, Claude H. Holthoff and Emmett Warren, as Commissioners of said district, be required to institute suits for the collection of all delinquent taxes of said district, and to prosecute the same with due diligence to a conclusion, and to see that the delinquent lands are sold promptly under the decree of foreclosure, and that they be required to do all things necessary, as Commissioners of said district, to insure the prompt collection of the drainage taxes." This judgment of the court was affirmed by the Circuit Court of Appeals, (Kersh Lake Drainage District v. State Bank & Trust Company, 92 Fed. 2d 783).

In accordance with the provisions of this mandatory injunction the County Clerk of Lincoln County extended a tax of 6½ per cent on the original assessment of benefits of $1600 against Johnson's 160 acre tract in this county. Johnson refused to pay this tax and the assessment against his lands was returned delinquent.

The Kersh Lake Drainage District filed the present suit in the Lincoln Chancery Court pursuant to the order of the Federal Court to collect the delinquent tax against Johnson's land and the delinquent assessments against the other appellants to this litigation. In his answer Johnson alleged that the tax sought to be collected was void and set up as a complete bar the decree of the Lincoln Chancery Court ren-

dered on October 19, 1931, supra, in the former suit brought by him against the district, pleading res judicata. He also alleged that his lands were not embraced within the terms of the mandatory injunction for the reason that the injunction [fol. 128] directed the county clerk to extend a tax on the assessed benefits in the district, and that there were no unpaid "assessed benefits" against his land. The other appellants here made similar allegations in their answer with respect to their lands and also pleaded the decree rendered by the Lincoln Chancery Court on June 15, 1932, in their favor, as res judicata. The chancery court overruled the defenses set up by these appellants, entered a decree for the taxes and ordered the lands sold to satisfy them. The trial court was of the opinion that it was precluded by the Federal Court's order from considering any of the defenses interposed by Johnson or the other appellants.

The decree of the Lincoln Chancery Court, heretofore referred to, in the cause in which appellant, A. J. Johnson, was plaintiff and Kersh Lake Drainage District was defendant, and rendered on October 19, 1931, recites, among other things, the following: "The court being advised as to the law and facts in the premises, finds that the plaintiff is the owner in fee of the SW¼ of Section 8, Township 9 South, Range 5 West; that said lands constitute a part of the Kersh Lake Drainage District of Jefferson, Lincoln and Desha counties, that said drainage district was organized by the judgment of the Jefferson Circuit Court on August 24, 1912, under Act No. 279 of the Acts of 1909, and that said land was assessed benefits of $1600 by the assessors of said Kersh Lake Drainage District and said assessment of benefits was duly confirmed by the judgment of the circuit court of Jefferson county on February 3, 1913; that subsequent to the confirmation of the assessment of benefits, taxes were annually extended against plaintiff's said land, and from January 1, 1914, to and including the year 1929, payable in 1930, the plaintiff paid a tax in favor of Kersh Lake Drainage District and as a credit on the assessments of benefits made and confirmed against his land the total sum of $1628.00; that the defendant commissioners over the protest of the plaintiff extended a total and further tax of $104 for the [fol. 129] year 1930, payable in 1931, in favor of the Kersh Lake Drainage District, and the plaintiff has refused to pay and the foregoing described lands have been certified by the collector of Lincoln county to the chancery court of

Lincoln County as delinquent for said amount, and said commissioner is about to sell said land for said delinquency.

"The court further finds that upon the payment by the plaintiff of the total assessed benefits in favor of Kersh Lake Drainage District in the sum of $1600 against the SW¼ of Section 8, Township 9 South, Range 5 West, all of the lien, right or interest of the Kersh Lake Drainage District against said lands by virtue of the improvement made by the Board of Commissioners in and for the Kersh Lake Drainage District became duly paid and satisfied, and the Commissioners are without authority to extend further taxes against plaintiff's land collectible in the year 1931, or any other years.

"It is, therefore, considered, ordered and decreed that the lien of the Kersh Lake Drainage District against the SW¼ of Section 8, Township 9 South, Range 5 West, by virtue of its assessment of benefits in the sum of $1600 is fully satisfied and released; that the tax extended by the Commissioners for 1930, collectible in 1931, is without authority and void, and the clerk of this court shall satisfy the record of the delinquent lands returned to him in 1931 as far as SW¼ of Section 8, Township 9 South, Range 5 West, is concerned, and the defendant Commissioners are permanently restrained from extending other and further taxes against the plaintiff's said land * * *".

The decree in the cause of W. A. Fish and others (the other appellants in the instant case) and Kersh Lake Drainage District which was entered on June 15, 1932, is similar in effect.

In the instant case the decree of the lower court is in part as follows: "* * * said cause is heard upon the com- [fol. 130] plaint filed, proof of publication of the notice of the advertisement of said lands, the certified list of delinquent lands filed by the collector of Lincoln County for the years 1935 and 1936, tax records including said lands for said years, separate answer of A. J. Johnson, with certified copy of the decree of the Lincoln Chancery Court in the case of A. J. Johnson v. Kersh Lake Drainage District and in the case of W. A. Fish, et al., v. Kersh Lake Drainage District attached as exhibits to said answer, together with all amendments thereto, and the written statement of Victor Felly, from all of which the court finds: * * *

"And the court further finds that since the filing of the complaint herein, separate answer filed by A. J. Johnson,

claiming to be the owner of the following tract of land lying and being situated in the county of Lincoln and State of Arkansas, to wit: Southwest quarter (SW¼) of Section eight (8), Township nine (9) South, Range five (5) West, it being contended in said answer that the total amount of the original assessed benefits against said lands had been fully paid; that the postponed installments of benefits so assessed did not bear interest and that the lien created against said land by the original assessment of benefits had been fully discharged. In said answer the said A. J. Johnson also contended that the decrees in the cases of A. J. Johnson v. Kersh Lake Drainage District and W. A. Fish, et al., v. Kersh Lake Drainage District were res judicata of the issues in this suit. Said answer also contained a prayer for relief for the owner of said lands and for the owners of other lands similarly situated. • • •

"The court finds all of the issues against the said A. J. Johnson and other property owners similarly situated, which said issues were set out in the answer filed by A. J. Johnson and amendments thereto."

The decree then adjudicates that the taxes levied on the [fol. 131] lands of A. J. Johnson and the other answering defendants were delinquent and ordered the Commissioners to sell the lands to satisfy the taxes. From this decree of the court comes this appeal.

Appellants state the issue before us in the following language: "The question in this case is whether or not a decree, in a suit by a landowner against a drainage district, adjudicating that the owner had paid the full limit of benefits accruing to his land, and perpetually enjoining the district from collecting any more taxes on it, is res judicata in a subsequent suit by the district to collect additional taxes on the land, brought in obedience to an order of the Federal Court directing the County Clerks of three counties 'to extend upon the tax-books of their respective counties a tax of 6½ per cent of the benefits assessed against each tract of land' in the district, to pay a judgment rendered in that court against the district".

We are of the view that the judgment of the Lincoln Chancery Court in favor of Johnson on October 19, 1931, and that rendered in favor of the other appellants on June 15, 1932, are res judicata in the present suit brought by the district against these same parties to collect additional taxes

on their lands brought in obedience to an order of the Federal Court.

In this case the appellee, drainage district, has sued appellants for drainage taxes alleged to be due from them to the district. These appellants defend upon the ground that they have already paid in full all the tax benefits assessed against their lands and that they have done all that the law requires of them. In support of their position, appellants set up specifically, as res judicata of the issues here, the former decrees in 1931 and 1932, supra, in the same court from which this appeal comes, in which the same parties were involved, involving the same taxes, and in which it was [fol. 132] adjudicated that they had paid in full the taxes lawfully assessed against them. They insist, and we think correctly so, that these decrees in a suit between the same parties, involving the same issues and the same subject matter are res judicata of the questions involved in the instant case.

As we view it, the power of the Federal Court to make the mandatory order, which it made, is unquestioned, but the effect of this order was a direction to the Commissioners of the drainage district to institute proper proceedings, in the proper state court, to enforce the payment and collection of all delinquent taxes assessed against the property owners in the district as a class, who were delinquent on their assessed benefits. The effect of this Federal Court order was not to deprive the individual taxpayer and landowner of any right that he might have in the state court to resist collection of the additional tax assessed against his particular lands. Each taxpayer was entitled to be heard not only upon the validity of the tax levied, but also upon the amount of the tax. The mere fact alone that the Federal Court directed the appellee district to bring the present suit in the state court, was a recognition by the Federal Court of the power of the state court to decide the issues involved. The Federal Court order directed the county clerks of the counties in which the lands in question in the district were located to extend a tax of 6½ per cent of the benefits assessed against each tract and directed the appellee district to bring suit for the collection of these taxes. If the clerks erroneously extended such taxes and the district brought the suits to collect non-existent taxes under a mistaken conception of the scope of the Federal Court order, the appellants lose no right of defense. They

could make the same defenses against such suits as they would have been entitled to make had the Commissioners brought the suits without orders from the Federal Court. [fol. 133] It was not the purpose of the Federal Court to enforce the collection of taxes in this district after they had been paid, or to exact benefits in excess of those lawfully assessed against appellants' property. As we view it the Federal Court suit, in which the certificate holders secured a judgment against the district, appellee, did not involve the validity of the assessments against the appellant landowners. It simply involved the liability of the district to the holders of the certificates. The Federal Court correctly held the district liable to the bondholders but the effect of that holding does not deny to the individual taxpayer the right to resist the collection of the tax in question.

In the present case appellants are not resisting the order of the Federal Court directing the district to assess and collect a tax. They concede the validity of that order and the duty of the district and its officers to obey it. These district officers have levied the tax and have brought suit to collect it against the property owners in the district, as a class, who have not paid the tax, but not against appellants who have actually paid the tax as shown by the judgment of a state court of acknowledged jurisdiction.

In the case of State of Arkansas for the use and benefit of Craighead County v. St. Louis-San Francisco Railway Company, 269 U. S. 172; 46 Sup. Ct. 66, the facts were that the Maccabees secured a judgment in the Federal Court in Craighead County on certain county warrants. In aid of this judgment the Maccabees instituted mandamus proceedings and the Federal Court made an order directing the taxing officials to assess at full money value all property in Craighead County and to continue said assessment until the judgment of the plaintiff had been paid in full. The assessment was made by the taxing authorities in attempted compliance with the order of the Federal Court.

Thereafter the State of Arkansas for the use and benefit [fol. 134] of Craighead County sued two railroad companies for the collection of the taxes as assessed under the order of the Federal Court. These companies defended on the ground that the assessment ordered by the Federal Court was not properly made and, therefore, in violation of the State Constitution. The state court sustained their defense

and this decision was affirmed by the Supreme Court of the United States in which it held, quoting the headnotes:

"A mandamus issued by the Federal District Court for the purpose of satisfying a judgment previously entered therein against a county, and commanding tax officials to assess all property in the county at its full value and continue so doing until the judgment shall be paid, but laying down no further details as to the manner of making assessments, is to be taken as requiring that they be made in accordance with the laws of the State, leaving the question whether an assessment, when made, complies with those laws to be determined, in appropriate proceedings, by that court, or by the state courts.

"Hence, where, in purported compliance with such mandamus, the property in the county was assessed at full value for county taxes (out of which the federal court judgment was to be paid) but at one-half its value for state, municipal and school taxes, and the State Supreme Court, adjudging that the discrepancy was contrary to a uniformity requirement of the State Constitution and not in accord with the direction of the Federal Court, refused to enforce collection of the county taxes for more than 50%—*held*, that the judgment of the state court plainly did not deny the authority or question the validity of the mandamus of the Federal Court, and was not reviewable in this Court under Sec. 237, Jud. Code, p. 176".

We think the principles announced in this case are applicable here.

[fol. 135] The object of a writ of mandamus or a mandatory injunction is merely to require public officials to perform an existing duty and courts cannot require them to do more than the law permits them to do. As was said in United States v. County of Macon, 99 U. S. 582, 591: "We have no power by mandamus to compel a municipal corporation to levy a tax which the law does not authorize. We cannot create new rights, or confer new powers. All we can do is to bring existing powers into operation". And even though the Federal Court properly rendered the judgment in favor of the certificate-holders against the appellee district and properly ordered the officials of the district to collect a tax upon the property of each citizen therein to pay the judgment, nevertheless this order did not deny to appellants and the individual tax-payer in that district the

right to set up any defense against the tax assessment that he might have.

Appellants in the instant case are not attempting to set up a class defense or one that is common to all the landowners in the district; they are asserting a defense, which is peculiar to themselves alone, based on the decrees of the state court which perpetually enjoined the district from collecting any more taxes on these lands. We hold that these decrees are res judicata, and we do not think it material in the present case whether these decrees of the state court were right or wrong, there being no allegation of fraud, or want of jurisdiction. No appeals were taken from them. The Supreme Court of the United States in Jeter v. Hewitt, 22 How. 352, said: "Res judicata renders white that which is black, and straight that which is crooked. Facit excurvo rectum, ex albo nigrum". The decrees in these suits rendered in 1931 and 1932, supra, could only have been set aside on appeal or by direct action to annul them on the ground of fraud, and as we have said no appeals [fol. 136] were taken, and no fraud on the court in which the decrees were rendered, is reflected by this record.

On the whole case we conclude, therefore, that the chancellor erred in holding that the lands of appellants are liable for any additional tax assessments in the appellee district, and its judgment is accordingly reversed with instructions to enter a judgment not inconsistent with this opinion.

Smith, McHaney and Baker, JJ., dissent.

[fol. 137] In Supreme Court of Arkansas

[Title omitted]

Petition for Rehearing—Filed June 14, 1939

The appellee respectfully prays the court to reconsider its decision in this case for the following reasons:

I

The Kersh Lake Drainage District, in 1912, was duly organized as an improvement district under our general drainage law, and made in that year an assessment of

benefits amounting to $293,191.90. By an Act of 1913, this assessment of benefits was made to bear interest at the rate of six per cent per annum. The District proceeded with its work of construction and issued to the contractors its negotiable certificates of indebtedness authorized by the statute to the amount of $181,500. Taxes were levied to meet these obligations by the Jefferson Circuit Court, where the affairs of the District were handled, varying in amount from time to time from three per cent to eight and one-half per cent of the assessed benefits, the last levy having been made by the court in 1924, when the amount of the levy was fixed at six and one-half per cent and was to continue until the last of said certificates of indebtedness should be paid. The District paid its indebtedness as it matured until 1929, when it made default in its payment of the principal. It continued to pay interest until August, 1932, when it made default thereon. Afterwards, the State Bank & Trust Company of Wellston, which owned $49,000 of the certificates of indebtedness, brought suit in the Federal Court and recovered a judgment for $54,655 on November 1, 1935. In that suit it was contended by the appellee that the certificates of indebtedness were void because with interest they would exceed the amount of the assessed [fol. 138] benefits, and that the statutes of 1913 and 1919, making the benefits bear interest, were not applicable to this District because passed after its organization and the making of the assessment. This defense, along with other defenses, was overruled and the action of the District Court was sustained on appeal to the Circuit Court of Appeals. Thereupon, the said State Bank & Trust Company of Wellston brought suit in the United States Court for a decree requiring the commissioners of the appellee District to act as receivers of the Federal Court. By its decree a mandatory injunction was issued, and they were required to act as receivers and to collect the drainage taxes. This suit was brought in pursuance of that mandatory injunction. Every question involved in this case was settled by those two cases. This Court, in refusing to recognize these decrees as res judicata of the questions now presented is denying to the decrees of the United States District Court for the Eastern District of Arkansas rendered in said cases, the faith and credit to which they are entitled, and is violating the rules of comity by which alone our dual

system of administering justice can be successfully operated.

II

In refusing to enforce the collection of the delinquent assessments as ordered by the mandatory injunction of the Federal Court, this Court has drawn into question the validity of an authority exercised under the laws of the United States, and has decided against the validity of the action of the District Court of the United States for the Western Division of the Eastern District of Arkansas, affirmed by the Circuit Court of Appeals of the Eighth Circuit.

III

By its decree in refusing to enforce the collection of the assessments of benefits to be collected by the decree of the United States District Court aforesaid this Court has re-
[fol. 139] fused to give effect to such judgment and mandatory injunction, in contravention of the judicial power granted to the Federal Courts by Article 3 of the Federal Constitution and Acts of Congress passed in pursuance thereto, and in contravention of clause 2 of Article 6 of the Federal Constitu-ion making the constitution and laws of the United States the supreme law of the land.

IV

By the decision of this Court in the case of Dickenson v. Mingea, 191 Ark. 946, and Act No. 46 of 1933, it has become the established law of this State that a Chancery Court can require the commissioners of an improvement district to act as its receivers. By the decree of the United States District Court for the Eastern District of Arkansas, which appears on page 84-B of the transcript, it was provided as follows:

"It is further considered, ordered and decreed that the defendants, T. H. Free, Claud H. Holthoff and Emmet Warren, as commissioners of said district, be required to institute suits for the collection of all delinquent taxes of said district, and to prosecute the same with due diligence to a conclusion, and to see that the delinquent lands are sold promptly under the decree of foreclosure, and that they be required to do all things necessary as commissioners of said district to insure the prompt collection of the drainage

taxes; and the said commissioners of said district are deemed receivers of this court, and as such they are required to perform all their duties as such commissioners with due diligence, and report their doings to this court on the 1st day of June and December of each year, reporting all taxes collected and what action they have taken to enforce the collection of delinquent taxes."

This suit was, therefore, brought by them as receivers of the United States Court and in refusing to affirm the opinion of the court below, this court has put itself in opposition to [fol. 140] the said court of the United States, and undertaken to prevent enforcement of the process of that Court.

V

The court assumes that the litigation between the District and its landowners is a thing with which its creditors have no concern. It treats the litigation just as if the District owed no debts which would be affected by its judgment.

The decision would be justified if the District were free of debt, and the only question was whether it would or could enforce its taxes so as to get the money to pay necessary maintenance and expenses of operation.

This District, however, is largely in debt. The judgments against it in the Federal Court exceed $60,000, and a mere trifle has been paid upon them. The only assets of the District are its assessment of benefits. By the terms of the statutes and repeated decisions of this court, the benefits bear interest at six per cent. Running from 1912 to the present time the interest doubles them at least. In the decree on which the appellant relies it was held that they bore no interest, and that the land-owners having paid an amount equal to the principal, the officers should be enjoined from collecting any further taxes. The decision of this court would deprive the holders of the indebtedness of the only means of enforcing payment, and take their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

VI

The complaint in the suit of Johnson v. Kersh Lake Drainage District, relied upon by the appellant as res judicata, shows upon its face that benefits to the appellant's lands were assessed in 1912 at $1600, and that he has paid

only $1628, leaving all interest except $28 unpaid. The decree recites the same facts. Tr. 6. Therefore, it shows that only $28 had been paid upon the interest which, at the time of the rendition of the decree, amounted to as much as [fol. 141] the principal. The decree therefore bears its death wound on its face. The complaint contains no allegations justifying its entry, and it is, therefore, not merely voidable, but void, and the attempt of this court to give it force would deprive the creditors of the District of their property without due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States. The same is true of the decree rendered in favor of the other property owners, who did not appear in the court below or appeal to this court, and who are therefore not before the court.

VII

The decree in favor of appellant was entered on October 19, 1931. The Commissioners of the District and the other landowners were not lawyers, and honestly believed that the decision in the case brought by said Johnson for injunction stated the law, and that they, therefore, had discharged their full obligation. Accordingly all the other property owners in the District, who had paid their drainage taxes, brought suit in the chancery court of Lincoln county for the purpose of enjoining the collection of the taxes upon their lands. These included the three commissioners of the District. Holthoff, the chairman of the Board, was much the largest planter in the District; Free, another member of the Board was a large landowner; and Warren, the third member, was a large landowner as a member of the firm of Grant & Warren; and they united with all the other landowners who had paid their taxes in the suit to enjoin the collection of further taxes. In the latter case the decree was entered on June 15, 1932, and the commissioners of the District, whose duty it was to protect its interest, were plaintiffs under the mistaken belief that they had the right to appear in that dual capacity. Counsel criticises them for occupying now a different position; but they are now acting as the receivers of the United States District Court under a mandatory injunction compelling them to bring suit to foreclose the taxes. The decree procured by the commis- [fol. 142] sioners as plaintiffs destroying the rights of the District to collect the taxes out of which alone its debts can

be paid, does not constitute due process of law within the provisions of the Fourteenth Amendment to the Constitution of the United States, and this Court in sustaining it as res judicata violates the requirement of due process secured to every person by said Amendment.

VIII

It has been settled by repeated decisions of the Supreme Court of the United States that the due process of law guaranteed to all litigants by the Fourteenth Amendment to the Constitution of the United States requires that every judgment or decree be based upon notice to the interested parties and an opportunity to be heard. This Court holds that the decrees in favor of Johnson and other owners of real estate of the District were binding upon the holders of the negotiable certificates of indebtedness, although they were not parties to the litigation and never heard of it till years after the rendition of the decrees. This suit is brought for their benefit and they are the real parties in interest. The decree herein would deprive them of all means of collecting their indebtedness if it were sustained, and is in plain violation of said Fourteenth Amendment, which provides that no person shall be deprived of his rights by a proceeding of which he had no notice and in which he had no opportunity to appear and defend.

IX

Negotiable paper passes from hand to hand in the markets of the world. Our whole system of transacting business would be destroyed if it were held that the holder of negotiable paper who brings suit upon it could be affected by any proceeding against a previous holder. It is therefore, the universal rule that the holders of negotiable paper are not affected by res judicata unless the paper is seized and impounded. These certificates of indebtedness are in a form set forth on page 30 of the transcript. They are pay-[fol. 143] able to Hahn and Carter, or bearer. In deciding that the holders of said certificates were bound by the decision of the Lincoln Circuit Court in the suits brought by Johnson and other landowners and of which they never heard until years after their rendition this court would deprive the holders of said certificates of their property without due process of law in defiance of the Fourteenth Amendment to the Constitution of the United States.

X

It has been held repeatedly by the Supreme Court of the United States that no State Court by any order, judgment, decree or process can interfere with the enforcement by the Courts of the United States of their judgments and decrees. The Court below did its duty in rendering a judgment of foreclosure in accordance with the mandatory injunction issued against the Commissioners of the District and the taxing officers of the counties by the United States District Court for the Western Division of the Eastern District of Arkansas; and this Court, in setting aside that decree, has undertaken to defeat the operation of the decrees of the said United States Court.

XI

The decision in the case undertakes to nullify the action of the United States District Court in the two cases brought against said District by the State Bank & Trust Company of Wellston and denies to it and to the other holders of the certificates of indebtedness that protection of the law to which they are entitled by said Fourteenth Amendment.

XII

It may be true that there is a considerable amount of drainage taxes which have not been collected; but substantially all such drainage taxes are upon unimproved lands, which are not worth the amount of the assessment, and which could not be sold for any price with the drainage as- [fol. 144] sessment upon them; so that they are absolutely worthless as security for the debts of the District. All the lands of any value have by this decision been freed from liability for the debts of the District.

XIII

This decision not only affects the obligations of this District, but it also affects all other bonds issued by improvement districts in the State of Arkansas. Such bonds are held by parties scattered all over the United States and some in foreign countries. Any district, which wishes to repudiate its debt, need only have a suit brought by its landowners against the commissioners, of which the bondholders would hear nothing, and let a decree be entered therein, enjoining the further collection of taxes.

XIV

There is a mistake of fact in the opinion which should be corrected lest it cause trouble in the future. In the first paragraph of the opinion it is stated that the amount of benefits is $272,782.12. In point of fact, as appears on page 18 of the transcript, the amount of the assessment of benefits was $293,191.90. The $272,782.12 was the amount of the original estimated cost of the work plus interest upon the certificates of indebtedness, which the District was proposing to issue. This mistake is not material to this appeal, but such errors are dangerous and may mislead in future litigation.

The appellee, therefore, prays that the decree of reversal heretofore entered in this cause be set aside and a decree of affirmance be entered; and that they be given two weeks from next Monday in which to prepare and file a printed brief in support of this petition.

Respectfully submitted, E. W. Brockman, Rose, Loughborough, Dobyns & House, for Appellee.

[fol. 145] State of Arkansas,
County of Pulaski:

I, George B. Rose, one of the attorneys for the appellee, hereby certify that in my judgment the positions taken in the foregoing petition for reconsideration correctly state the law, and that this petition is not filed for purposes of delay.

G. B. Rose.

[File endorsement omitted.]

[fol. 146] In Supreme Court of Arkansas

Order Overruling Petition for Rehearing—October 2, 1939

Being fully advised, the petitions for rehearing in the following causes, are by the court severally overruled, viz;

. . . . . .

No. 5501

Arthur Johnson

v.

Kersh Lake Drainage District.

. . . . . .

[fol. 147] IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR STAY OF MANDATE—Filed Nov. 1, 1939

The appellee respectfully shows to the Court that it contemplates applying to the Supreme Court of the United States for a certiorari to review the judgment in this Court in this case, and it tenders herewith a bond executed by a Surety Company, authorized to do business in the State of Arkansas, conditioned as the law requires, and asks that the mandate in this cause be held up until the final action of the Supreme Court of the United States on the petition for Certiorari.

Kersh Lake Drainage District, by G. B. Rose, Attorney.

[File endorsement omitted.]

[fol. 148] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ORDER STAYING ISSUANCE OF MANDATE—Filed November 1, 1939

Now on this day is presented to the undersigned Justice of the Supreme Court of the State of Arkansas a petition setting forth that the said appellee contemplates applying to the Supreme Court of the United States for a writ of certiorari to review the judgment rendered in this cause by this Court, and the said bond is approved, and an order made that the issuing of the mandate herein be stayed until the Supreme Court of the United States has acted upon said petition.

Griffin Smith, Chief Justice Supreme Court of Arkansas.

[File endorsement omitted.]

[fol. 149] Bond on petition for certiorari for $500.00 approved and filed Nov. 1, 1939, omitted in printing.

[fol. 150] IN SUPREME COURT OF ARKANSAS

JOHNSON

v.

KERSH LAKE DRAINAGE DISTRICT

DISSENTING OPINION—November 17, 1939

SMITH, J. (dissenting)

The majority opinion discovers a new method whereby old debts may be discharged without payment, even in cases where there is no question of limitations in favor of the debtor, or imputation of laches against the creditor. I, therefore, dissent.

I think it unimportant whether there was collusion in the rendition of the decree which is pleaded as res adjudicata. It sufficies to say that the majority opinion opens wide the door for such collusion and affords easy opportunity to defeat the collection of substantial parts of an improvement district's obligations.

Of the innumerable improvement districts, of various kinds, which have been organized throughout the state it is doubtful whether in any instance the property owners were required to discharge the betterments assessed against their lands in a single payment. Certainly the rule is to distribute these payments of betterments over a period of years, and when this is done numerous cases have held that interest may be charged upon these betterments. These cases are all to the effect that the interest charge does not operate to increase the betterments, but is a charge made for the indulgence of extension of time in paying the betterments. Among other cases so holding are the following: Oliver v. Whittaker, 122 Ark. 291, 183 S. W. 201; Pfeifer v. Bertig, 141 Ark. 531, 217 S. W. 791; Skillern v. White River Levee District, 139 Ark. 4, 212 S. W. 90; Massey v. Ark. & Mo. Highway District, 163 Ark. 63, 259 S. W. 387; Griffin v. Little Red River Levee District, 157 Ark. 590, 249 S. W. 16; Faulkner Drainage District v. Williams, 169 Ark. 592, 276 S. W. 604; Chicago Mill & Lbr. Co. v. Drainage District No. 17, 172 Ark. 1059, 291 S. W. 810.

[fol. 151] Act 467 of the General Acts of 1919 (page 343) provides that "Where assessments of benefits have been

made in drainage districts organized either under general or special acts, the property owner shall have the right to pay such assessments in full within sixty days after the passage of this act, but if he does not avail himself of this privilege, the assessment of benefits shall bear interest at the rate of six (6%) per cent per annum, and shall be payable only in installments as levied. The interest need not be computed until necessary to be sure that the collections have not exceeded the total amount of benefits and interest; or the interest may be first collected."

The circumstance that the statute making the benefits bear interest was passed after the district was organized and the benefits assessed, is not of controlling importance. The decisions of the United States Circuit Court of Appeals of this Circuit in the cases cited in the majority opinion involved the very taxes here sought to be collected.

That the statute above quoted is applicable to the instant case very clearly appears from the opinion of this court in the case of Benton v. Nowlin, 187 Ark. 738, 62 S. W. 2d 16. The theory upon which interest may be collected on deferred payments of installments of betterments was so thoroughly considered by the late Justice Butler in the case just cited that it would be a work of supererogation to pursue the question further.

Most—if not all—of the improvements constructed in this state, under our various improvement district statutes, have been paid for by the issuance of certificates of indebtedness or of bonds, the maturities of which are so distributed that they may be paid with the annual collection of installments of betterments.

Now, it may or may not be necessary to collect interest [fol. 152] on these betterments; but the right to do so is unquestioned. The collection of this interest may be required to pay the district's obligations; but the majority opinion permits that right to be defeated. It is only required that the commissioners permit themselves to be sued, and for the showing to be made that property owners have paid their original assessments without paying the interest thereon. The commissioners of the districts, who are usually large property owners, are under the temptation to make no defense, as they profit along with other property owners, in being relieved of proportionate liability for interest, and this relief may be awarded under

the majority opinion, although the real parties in interest, the holders of the bonds, or the certificates of indebtedness of the district, may be in profound ignorance of the suit until the right of appeal has been lost. This is the effect of the majority opinion, and I am constrained to dissent, and am authorized to say that Justices McHaney and Baker concur in the views here expressed.

[fol. 153] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 154] IN SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PRINTING OF RECORD—Filed November 29, 1939

It is agreed that in the printing of the record herein the following matters shall be omitted:

All the matter appearing on pages 28 to 64, inclusive, and pages 74 to 76, inclusive; on pages 83 and 84, and on pages 86 to 116, inclusive, of the typewritten transcript sent up by the Clerk of the Supreme Court of the State of Arkansas.

George B. Rose, Attorney for Petitioner. Walter G. Riddick, Attorney for Respondent.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 29, 1940

The petition herein for a writ of certiorari to the Supreme Court of the State of Arkansas is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.